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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Initial reports submitted by States parties under articles 16 and 17 of the Covenant

Addendum

EL SALVADOR

[16 December 1994]

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* Available for consultation in the files of the Secretariat.

INTRODUCTION

1. The Government of El Salvador has the honour to submit to the Committee on Economic, Social and Cultural Rights, pursuant to the provisions of article 16 of the Covenant on Economic, Social and Cultural Rights, its initial report on that Covenant, in accordance with the new system adopted by the Economic and Social Council in resolution 1988/4.

2. For more than a decade, El Salvador has suffered the worst crisis in its history. Overcoming this crisis has demanded the utmost endeavour on the part of all sectors of the nation and solidarity from the international community, bringing us successfully to attainment of the desired peace in January 1992. Today our concern is with the achievement of national reconciliation and the consolidation of a great national alliance that will foster understanding between all sectors, serving as a foundation in our search for better ways of meeting the aspirations of our people.

3. In this situation, our guiding principle is recognition of the human person as the central focus of the activity of the State, and the origin and finality of its existence. We are fully conscious that, as well being unequivocally guaranteed in law, respect for the dignity of the person must be translated into concrete facts and realities that will gradually raise the standard of living of human beings and their families.

4. The tasks and challenges before us are difficult, as will be the pitfalls to be avoided by the developing countries in seeking to achieve the welfare of our peoples, and along this arduous path we hope that we can continue to count on the cooperation of the community of nations and its international institutions. In this spirit, the Government of El Salvador is firmly decided to establish and strengthen a constructive dialogue with the Committee and determined to meet the obligations that arise from the international instruments to which it is a Party.

I. GENERAL PROVISIONS OF THE COVENANT

Article 1. Right of self-determination

5. Throughout its history as an independent country El Salvador has been a staunch champion of strict compliance with the principle of self-determination of peoples. Thus, both in its relations with other States and within international organizations, it has condemned all foreign interference in the internal affairs of any country.

6. As regards the political situation which we have known in the Republic, we have struggled and will continue to struggle, with the help of the democratic nations of the world, to eliminate every form of foreign interference of the kind from which this country suffered when countries from Latin America and in other continents gave aid of various kinds to the armed opposition which was seeking to impede and destroy the developing democratic process, which, happily, is strengthening its foundations daily.

7. In this context El Salvador is playing an active role in the process of promoting peace and democracy in Central America which is being conducted in

pursuance of the Esquipulas II text, signed in August 1987. The principle of respect of the right of self-determination of peoples is one of the basic elements and an integral part of that text, which has led to the creation of a system of integration within Central America within which the States in the sub-region have expressed the intent to combine their efforts to bring about the full development of the peoples of the area.

8. In the exercise of its sovereignty, Salvadorian society has set up a legal structure, following the models and procedures permissible in a State governed by the rule of law. The people of El Salvador elect their rulers freely; the latter, invested with legitimate authority conferred on them by the people, exercise sovereign power and, in their representative capacities, manage programmes and projects designed to secure the economic, social and cultural development of the country with the assistance and responsible participation of all its citizens.

9. Within the United Nations El Salvador has shown its sincere and keen attachment to this principle, consistently supporting the resolutions of the General Assembly and the resolutions and decisions of the Security Council condemning, and providing for measures to combat, interference, invasions by foreign countries, occupation and colonialism and demanding respect of the right of peoples to elect their own governments and to sovereignty. In the same spirit El Salvador has given its utmost support to the Secretary-General in his endeavours to settle these problems and to the use of peaceful means for the settlement of international disputes.

10. El Salvador has disposed freely of its natural wealth and resources ever since achieving independence.

11. The economic order of the country is based essentially on principles of social justice seeking to ensure that all the inhabitants of the country enjoy a level of living compatible with human dignity.

12. The economic and social policies being pursued by the current Presidential regime and initiated by the previous regime are based on the following principles:

(i) man is an end in himself, and not a means of directing the functioning of society (the State has a duty to place itself at the service of man, never the reverse);

(ii) the State acts in a subsidiary capacity; the productive sector acts according to principles of solidarity;

(iii) the ultimate aim of society is the common welfare - not that of a majority; still less that of a minority; but that of each and every citizen.

In the view of the present administration, the social market economy offers the best means of unleashing the creative talents of the individual (more resources mean progress for society as a whole).

13. Exercising its right to self-determination, El Salvador's activity is based on the economic order established in the Constitution of the Republic.

Article 101 of the Constitution states that the economic system must be based essentially on principles of social justice that will ensure to all the inhabitants of the country the livelihood of a dignified human being. It also provides that the State shall promote economic and social development through the increase of production, productivity and the rational utilization of resources. To the same end, it shall foster the diverse sectors of production and defend the interests of consumers. Another principle we consider it important to stress is that of article 102, which states that economic freedom is guaranteed, in so far as it is not contrary to the social interest.

14. In the Constitution of the Republic, a copy of which is attached to this report, the economic order is set out in Title V, in articles 101 to 120.

Article 2. Enjoyment of rights recognized in the Covenant

Paragraph 1

15. The Government of El Salvador is fully committed to the human person, which it recognizes as the central focus of social activity, and to the family as the nuclear group in society, and has accordingly established respect for human dignity as a guiding principle, like the previous Government before it, to which end it intends to strengthen the laws that guarantee the enjoyment of economic, social and cultural rights and adopt all necessary measures to transform them into tangible reality, progressively improving the quality of life for individuals and their families and ensuring that freedom and justice are the basis for social advancement.

Paragraph 2

16. The Constitution of the Republic establishes in article 3 that: "All men are equal before the law." In the enjoyment of civil rights, no restrictions shall be enacted based on differences of nationality, race, sex, or religion. This principle does not mention the other differences referred to in this paragraph; but in practice it has always been part of the country's understanding that it is also inadmissible to place restrictions on the enjoyment of economic, social and cultural rights on the grounds of political opinion, economic status or for any other reason.

17. In a clear interpretation of this principle, the Salvadorian Government considers that the human rights emanate from nature itself and originate with the Creator. The State is an entity created by man and must therefore be at the service of the individual, and in no circumstances the reverse. Society is no more than the sum of the individuals of which it is composed, so that the well-being of each member of society equals the well-being of society. When the common good is pursued, it should take precedence over the interests of such entities as the State, for otherwise it is only a privileged group that will benefit.

Paragraph 3

18. The only situation for which provision is made in the legislation of El Salvador, and which therefore arises in practice, is that of industrial and commercial activity and the provision of services, which the Constitution of the

Republic, in article 115, determines to be the prerogative of Salvadorians by birth and nationals of Central America.

19. Article 90 of the Constitution establishes who are Salvadorians by birth.

Article 3. Equality of rights of men and women

20. Women in El Salvador play a very important role in society, productivity and political involvement. Nevertheless, there is much to be done to ensure that women have equal opportunities and are fairly treated.

21. Women make up 52% of the population of El Salvador, with a total of approximately 2,625,000 women. But they have not played a full part in the economic and productive life of the country. A country needs the collaboration of all its inhabitants in order to develop. Traditionally women have only been valued in their domestic role as mothers and housewives.

22. Conscious of this situation, the National Secretariat for the Family has set up a Women's Assistance Unit to promote initiatives to effectively incorporate women into the process of national development. To this end seminars have been organized to expose and sensitize Salvadorian society to the problems of violence within families, gender and health and self-care, gender and the law, sexual stereotypes in education, and improving self-esteem in the family (children, teenagers and women). Establishing concertation with NGOs in the area of women's issues, and incorporating the results into the programmes implemented by government agencies, the following activities have been carried out by the Unit in each of these fields:

1. Legislation

23. The Women's Assistance Unit has promoted the creation of a Commission on the Family in the Legislative Assembly, drafted proposals for amendment of the Penal Code and the Code of Penal Procedure in which intrafamiliar violence is characterized as an offence, supported the establishment of the first Women's and Family Defence Office within the Office of the Attorney-General of the Republic to oversee compliance with human rights relating to women and children, instigated the revision and adoption of the Family Code, supported the establishment of clinics for victims of sexual aggression, in coordination with the Ministry of Public Health and Social Welfare, the Institute of Forensic Medicine, the ISSS and the Attorney-General's Office, and trained technicians of both sexes from governmental and nongovernmental agencies to analyze legal texts from a gender perspective.

2. Intrafamiliar violence

24. Intrafamiliar violence is a form of abuse of power over the weakest members of the family group; it may take the forms of physical and psychological violence, as well as sexual of abuse of women. No detailed information on intrafamiliar violence in the country is available, as it is mostly kept within the intimacy of the home; however, some recently founded institutions are calling for denunciation and protection of the victims of aggression, revealing the presence of this problem in our society.

25. The Office of the Procurator for the Defence of Human Rights has dealt with nearly 90% of the complaints received that relate to domestic violence. Cultural patterns influenced by stereotyped roles and the dissemination of an image of women in a subordinate social position contribute to these types of behaviour. To counteract this situation the Secretariat has organized seminars to raise awareness among the personnel working in public institutions, and on community approaches to tackle the problem of violence within families.

3. Education

26. In the field of education, school textbooks have been reviewed in regard to sexual roles and stereotypes and human resources have been trained to analyze educational texts and materials in general, avoiding disparity in gender treatment. Support has also been given to the implementation of the "Young mothers" programme set up in response to the high levels of fertility among our adolescent girls.

4. Self-esteem

27. Programmes in this discipline have been carried out at the national level, with emphasis on the reformed sector and on local health systems, to train human resources in regard to the issues of gender, health and self-care and reassess the role of women in the country's process of development.

Articles 4 and 5. Limitations on the rights recognized in the Covenant

28. The Government of El Salvador would like to say in this report that it believes it is interpreting the requirement to ensure the economic, social and cultural rights contained in the Covenant with sufficient scope, and with proposals that give effect and adequate dimension to its commitment, and, in this regard, that the legislation of El Salvador is compatible with the criteria for interpretation indicated by the Committee. It is nevertheless important to point out that limited implementation, within the principle of effective progression, is imposed by limitations in resources. There are no legal provisions enforcing rights as such, but El Salvador is unequivocal, like any other democratic nation, in its pursuit of the integral welfare of its people, and endeavours in this spirit to transcend the Covenant in ensuring the rights contained in it, and others that may not be mentioned, aiming for an ideal that is just, humane and progressive.

II. SPECIFIC PROVISIONS OF THE COVENANT

Article 6. Right to work

29. As established in article 37 of the Constitution, labour is a social function which enjoys the protection of the State and is not regarded as an article of commerce. The State, as specified in this article, shall employ all resources at its disposal to provide employment for manual or intellectual workers and to ensure them and their families the economic conditions for a dignified existence. In the same manner, the State will promote work and employment for people with limitations or incapacitations of a physical, mental or social character.

30. Work in El Salvador is governed by articles 37 to 52 of the Constitution (Section II of Chapter II "Social Rights").

31. A list of the conventions of the International Labour Organization ratified by El Salvador is given in annex 1/; these amount to a total of 20, 14 of which were approved by the Legislative Assembly in 1994.

32. The Labour Code currently in force, which elaborates all the principles set out in the articles of the Constitution mentioned above, is intended to harmonize relations between employers and workers, and its teleological aim is to improve workers' living conditions. The Code regulates (a) working relations between employers and private workers, and (b) working relations between the State, the municipalities and autonomous official institutions and their employees. The Code is not applicable in cases where the relationship binding the State, the municipalities and the autonomous official institutions with their servants is of a public nature and originates from an administrative act, such as appointment to a post specified in the Wages Act as dependent on the General Fund or Special Fund of the institution in question or included in the municipal budget, or when the relationship originates in a contract for the provision of technical or professional services.

33. The Civil Service Act governs relations of employment in the central public sector, establishing the career structure and conditions of admission to the administration; promotion and advancement on merit and aptitude; transfers, suspensions and separations; the duties of public servants and remedies against decisions affecting them. It also guarantees public servants stability in their posts.

Article 7. Right to just and favourable conditions of work

34. The conditions of work to which this article of the Covenant refers are of constitutional rank in El Salvador.

35. Article 38 of the Constitution provides:

> "Labour shall be regulated by a labour code, the principal purpose of which shall be to attain harmony in relations between capital and labour, and it shall be based on general principles directed towards better living conditions for workers, and will include the rights of the worker, especially the following:
>
> 1. In the same enterprise or establishment and under identical circumstances, equal work must receive equal remuneration regardless of sex, race, creed, or nationality.
>
> 2. Every worker has the right to earn a minimum wage, which shall be fixed periodically. In fixing this wage, attention shall be given primarily to the cost of living, the type of work, the various systems of remuneration, the various regions of production, and other similar criteria. This wage must be

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1/ The annexes are available for consultation in the files of the Secretariat.

sufficient to satisfy the normal home needs of a worker in their material, moral, and cultural aspects.

For piecework and work paid by the job or on a percentage basis, it is compulsory to ensure the minimum wage per day of work.

3. Wages and social benefits, to the amount stipulated by law, are unattachable and may not be substituted or withheld, except for the obligations of support. Amounts may also be withheld for social security obligations, union dues, or taxes. A worker's tools are unattachable.

4. Wages must be paid in legal currency. Wages and social benefits constitute prior liens in relation to other credits that may exist against an employer.

5. Employers shall give their workers a bonus for each year of labour. The law shall prescribe the manner of determining the amount in relation to wages.

6. Ordinary effective daytime work shall not exceed eight hours and the work-week shall not exceed forty-eight hours.

The maximum hours of overtime for each type of labour shall be determined by law.

The number of hours of night work and work in dangerous or unhealthful tasks shall be less than for daytime work and shall be regulated by law. The limitation on working hours shall not apply in cases of force majeure.

The law shall determine the extent of interruptions in working hours when, for biological reasons, the rhythm of work so demands, and of the interruptions between two consecutive workdays.

Overtime and night work shall receive extra remuneration.

7. Every worker has the right to a day of rest with pay during each work week, in the form prescribed by law.

Workers who do not receive a day of rest in the period indicated, shall be entitled to extra remuneration for services rendered on such days, and to compensatory leave.

8. Workers shall be entitled to leave with pay on holidays designated by law; the law shall specify the classes of work for which this provision shall not apply, but in such cases, workers shall have the right to extra remuneration.

9. Every worker shown to have rendered a minimum of services during a given period shall be entitled to an annual paid vacation in the form to be prescribed by law. Vacations may

not be replaced by money and a worker has an obligation to take a vacation the same as the employer has the obligation to grant it.

10. Persons under fourteen years of age, and those who are older but subject to compulsory education required by law, may not be employed in any type of work. Their employment may be authorized if this is considered indispensable for the maintenance of the worker or his family, provided that this will not prevent compliance with the minimum requirements of compulsory education.

Working hours for persons under sixteen years of age may not be more than six hours a day and thirty-four hours a week, in any kind of work.

Work by persons under eighteen years of age and by women in dangerous or unhealthful work is prohibited. Night work is likewise prohibited for persons under eighteen years of age. The law shall specify what is dangerous and unhealthful work.

11. The owner who discharges a worker without just cause is obligated to indemnify the worker according to law.

12. The law will determine under which conditions the owners are obligated to pay their permanent workers who resign their job an economic compensation, which amount will be fixed in relation to their salaries and time of service.

Resignation produces its effects without need of acceptance by the owner, but the latter's refusal to pay corresponding compensation constitutes a legal presumption of unfair discharge.

In the case of total and permanent incapacitation or death of the worker, the worker or his beneficiaries will have a right to the compensation they would receive in the case of voluntary resignation."

36. All these principles are developed by the Labour Code and by special complementary labour legislation (organizational laws and regulations).

Article 8. Trade union rights

37. Article 47 of the Constitution establishes the right to form trade unions:

"Employers and private workers, without distinction as to nationality, sex, race, creed, or political beliefs, have the right to associate freely for the protection of their respective interests, by forming professional associations or trade unions. The employees of autonomous official institutions shall have the same rights.

These organizations are entitled to juridical personality and to due protection in the exercise of their functions. Their dissolution or

suspension may be ordered only in those cases and according to the formalities specified by law.

The conditions adopted for the basis and form of the constitution and functioning of professional and trade union organizations must not restrict the freedom of association. All exclusion clauses are prohibited.

Members of boards of directors of trade unions must be Salvadorians by birth, and during the period of their election and term of office, and up to one year after separation from their function, they may not be dismissed, suspended on disciplinary grounds, transferred, or their working conditions reduced, except for justifiable cause previously approved by the competent authority."

38. The right to form national federations is contemplated specifically in chapter X of the Labour Code, founded on the constitutional principle of freedom of professional association (article 47); on this same basis there is no obstacle to membership of trade unions or international organizations, there being both a generic and specific relationship between the constitutional principle and these concepts.

39. In regard to article 8, paragraph 1 (c) of the Covenant, the trade unions in El Salvador enjoy and function with the full guarantee of the law, basically as established in chapter I of Book II, and the Labour Code goes as far as to establish offenses relating to interference with freedom of association, either by enforcement of membership or expulsion.

40. It is important to note in this connection that El Salvador does not apply the exclusion clause, so that the benefits obtained by a trade union are also applicable to non-members, while no discrimination of any kind may be established in labour relations and the work performed on account of the fact that workers are or are not members of trade unions.

41. The right to strike also ranks in the Constitution, which establishes in article 48 that:

"Workers have the right to strike and employers the right to suspend work, without need of previous approval. To exercise said rights, no previous approval is needed, after procuring the solution to the conflict which generates them through stages of peaceful solution established by law. But the effects of this are antedated in the moment that the strike or the suspension of work begins."

42. Independently of the fact that the right to associate in trade unions is effectively exercised in El Salvador, we consider it important to state that the country is not a party to the ILO Convention to which reference is made in article 8, paragraph 3, of the Covenant.

43. The constitutional principles on the right to associate in trade unions and the rights to strike and to stoppage are regulated by the Labour Code.

Article 9. Right to social security

44. The State of El Salvador in its primary legislation is responsible for the provision of social security, which is taken to mean the efforts of society to maintain the physical, mental and spiritual welfare of the people, also ensuring that they have adequate economic means to live a dignified existence in the community, through well structured programmes of social medicine, social services, social insurance, etc.

45. To meet the objective of social security, our country has various entities with responsibility for provision in both the health and welfare sectors.

Ministry of Public Health and Social Welfare

46. The Ministry is the highest health authority in the country, and is financed by a budget from the State and by loans, grants and legacies. Its benefit plan includes: outpatient medical consultation; outpatient dental consultation; hospitalization; and auxiliary services for diagnosis and treatment.

It covers a population of 4,153,670 at present, amounting to 75.4% of the total population. This coverage is theoretical, as much of the population has no access to services, especially in the rural areas; and this figure also includes persons who make use of the private services.

Teachers' Welfare

47. This organization provides coverage exclusively for the teachers under the responsibility of the Ministry of Education. It is financed by a grant from the Ministry of Education and the contributions of the teachers who are members, this being set at 2% of their salaries, plus a fixed payment of ¢8.85 for their family group. The benefit plan includes: outpatient medical consultation; dental consultation; hospitalization; and auxiliary services for diagnosis and treatment. This agency covers a population of 148,731, comprising teachers and their families and accounting for 2.7% of the overall Salvadorian population.

The ANTEL hospital

48. This hospital is financed by a grant from the National Telecommunications Administration (ANTEL) and by the contributions of its employees.

The service is exclusively for the employees of this Administration and their family members. The contribution of staff employed under the Wages Act is 3% of their salary, with a ceiling of ¢20.00, and the contribution of payroll employees is 2% of their wages, with a ceiling of ¢20.00. Its benefit plan includes: outpatient medical consultation; outpatient dental consultation; hospitalization; and auxiliary services for diagnosis and treatment. This service covers a population of 49,577 people, composed of employees and their families, representing 0.9% of the total population of the country.

National Public Service Pensions Institute

49. This Institute provides social welfare services only. It is financed by contributions from the workers and the State, the yield from investment of its

reserves and surpluses, and income from any other source. The rates of contribution are:

Administrative employees' regime:	Workers	4.5%
	State	4.5%
		9.0%
Teachers' regime:	Workers	6.0%
	State	6.0%
		12.0%

Its benefit plan includes pension schemes for invalidity, old age and death only. It covers a population of 385 366 persons, or 7% of the total population of the country.

Armed Forces Institute of Social Welfare

50. This Institute covers social welfare as well as providing health services. It is financed by the contributions of its members, regular and special contributions by the State, the yield from investment of its reserves and surpluses, and income from any other source. The system for the collection of funds through contributions is as follows:

Pensions:	Persons insured	4.0%
	State	4.0%
		8.0%
Retirement fund:	Persons insured	4.0%
	State	3.0%
		7.0%
Life insurance:	Persons insured	1.0%
	State	2.5%
		3.5%

Its medical benefit plan includes: outpatient medical consultation; outpatient dental consultation; hospitalization; and auxiliary services for diagnosis and treatment. Its pensions benefit plan includes: invalidity pensions, retirement pensions, survivors' pensions, retirement fund, group life insurance, burial grant. The health and social welfare coverage provided by this Institute is estimated at 190,582 persons, comprising members and their families, or 3.5% of national coverage, but these figures remain hypothetical as no up to date information is available.

51. Annex 1 shows the population coverage of the institutions and agencies of the health and welfare sectors described above.

The Salvadorian Social Security Institute. The introduction of social security in El Salvador

52. The object of social security is to cover working men and their families against the natural and social risks that may at any time threaten their health, physical integrity and life, and hence their capacity for work. The establishment of social security in El Salvador dates back to 1923, when a number of American countries signed a convention in the city of Washington, United States of America, in which their representatives undertook to set up a compulsory social security system shortly in their respective countries; El Salvador was one of the signatories of this Convention.

53. In 1945 this concern was realised in our country with the reform of the 1886 Constitution, and in particular of article 57 which stated: "A law shall establish compulsory social security, with the participation of the State, employers and workers."

54. The Social Security Act in El Salvador was adopted by Legislative Decree No.329, of 28 September 1949, of the Council of the Revolutionary Government, and published in the Official Daily Gazette of 30 September 1949. In accordance with that law, the Salvadorian Social Security Institute was set up on 23 December 1949, on which day the meeting of the first Board of Directors was also held.

55. The Institute today administers two types of social security:

(a) insurance for sickness, maternity and occupational risks, known as the health regime and subdivided into the general health regime and the special health regime;

(b) the regime for invalidity, old age and death (pension regime).

Through the regimes which it administers, the Institute provides insured beneficiaries with different types of benefits and pensions in accordance with their acquired rights and the amount of payment to which they are entitled. The scope and benefits of the different regimes administered by the Institute are set out below.

General health regime

56. This regime covers workers dependent on employers and, by special arrangement, on some of the autonomous government agencies; applicability extends to the spouse or partner of the person insured and his children who are gradually incorporated. Agricultural workers, domestic service workers and casual labour are excluded. This regime covers insurance for sickness, maternity and occupational risks. Three types of benefits are provided:

(a) medical benefits: these include outpatient medical, dental and specialized consultations; general and specialized hospital care; pharmacy, radiology, nuclear medicine, clinical and pathology laboratory services, radiotherapy, ultrasound, cobalt therapy services, etc., and other auxiliary services for diagnosis and treatment;

(b) benefits in kind: medication, prosthetic and orthopaedic appliances, layettes and milk formula in cases of maternity;

(c) financial benefits: allowances for temporary incapacity for work on account of sickness, accident or maternity; burial grants for families in case of the death of the insured person, and occupational invalidity pensions.

57. The benefits provided in respect of children from 0 to 6 years include outpatient paediatric medical consultations, medication, laboratory and X-ray examinations. Provision for hospital care, dental services and monitoring of growth and development is not included.

Special health regime

58. This regime was established in January 1979 and applies to workers in the public sector not covered by the general health regime. Only the medical benefits and benefits in kind are provided, under the same conditions as in the general health regime. No provision is made for financial benefits in this regime.

Pension regime

59. The regime was established in January 1969. It applies only to workers insured under the general health regime. The Salvadorian Social Security Institute covers the risks of invalidity, old age and death through this regime. Under this regime, the Institute pays three types of pensions: old age pensions, invalidity pensions and survivors' pensions. Pensioners are also granted a child's allowance for children up to the age of 16 or up to the age of 21 if they are enrolled in an educational establishment recognized by the State, and beyond this age if they are disabled.

Financing

60. The principal sources of financing for these regimes are the contributions of workers, employers and the State.

Article 10. Protection of the family, mothers and children

61. Article 32 of the Constitution provides:

> "The family is the fundamental basis of society and shall have the protection of the State, which shall enact the necessary legislation and create the appropriate organizations and services for its integration, well-being and social, cultural, and economic development. Marriage is the legal basis of the family and rests on the juridical equality of the spouses. The State shall promote marriage, but the lack of this shall not affect the enjoyment of the rights that are established in favour of the family."

Background and perspectives of the National Secretariat for the Family

62. Twelve years of war in El Salvador have caused severe damage to family unity, with an accelerating deterioration of conditions in the moral, economic and social order.

63. The resultant problems in the context of the nuclear family required greater attention from the State, particularly in promoting attention from the agencies active in this field, leading to the establishment of a governing authority with convening powers to assume comprehensive responsibility for the strengthening and welfare of the family unit. The National Secretariat for the Family (SNF), created in 1989, was a response to the need to press forward with a priority social strategy to cope with the family problems identified in El Salvador, with advisers status to the Office of the President and serving as a liaison between it and the governmental and nongovernmental agencies with responsibilities for work with children, mothers and the family unit.

64. The concept of the family used from the outset by the Secretariat has been broadly comprehensive, covering matrimonial and de facto unions and relations of kinship, bearing in mind that there is no one family prototype but many different forms of family structure and organization. In this perspective priority attention has been given to the groups that are most vulnerable: women heads of household, children, adolescents and the elderly, seeking to promote their protection and respect for their human rights.

65. In consideration of the interest of Salvadorian society and in close compliance with the Constitution, the Government promotes marriage as the relationship that should ideally be the norm for the establishment of families in El Salvador; experience shows, however, that a high percentage of families are based on de facto or non-matrimonial unions, thus legitimizing this type of family formation. At the same time, the social conditions that have been prevalent have given rise to new problems with children and adolescents, so that the Secretariat has had to intervene to provide protection and assistance, especially in regard to aspects of a legal nature.

66. The general aim of the SNF is to achieve the best possible family welfare in El Salvador, giving priority attention to the most deprived and to households headed by women. Its fields of action have been children, adolescents, women and the elderly, promoting respect for their enjoyment of their legally established rights.

67. For its work in the future, the SNF will adopt two main approaches. It will play its role as the Government agency responsible for policies fulfilling the functions of coordination, evaluation, regulation and policy and programme formulation, and will also carry out special social or occasional activities in relation to situations requiring direct action. The main policy areas with which it is concerned are care for mothers, young children and the elderly, training and promotion of employment, youth, leisure and sports, basic infrastructure for environmental health, and local infrastructure.

Programmes implemented: legal aspects

68. The most important effort undertaken by the SNF has been the activities leading up to the adoption of the Family Code and to meet the pressing need for an appropriate legal framework to legislate for relations between family members, ensuring equal rights for men and women; equal rights for children; and the protection of minors and other legally incompetent persons, of the elderly and of deserted mothers.

69. To these ends, the SNF, the Ministry of Justice, the Office of the Attorney-General, the Office of the Procurator for Human Rights, and various representatives of the public and private sectors have arranged meetings to draft and put forward proposals relating to the preliminary draft formulated by the Salvadorian Legislative Review Commission, leading up to the present form in which the Code has been adopted.

70. The Family Code came into force on 1 October, covering the principles embodied in articles 32 to 36 of the Constitution, and is intended to comprehensively and systematically regulate all the questions to which it refers - the family, minors and the elderly.

71. The Family Code recognizes the family unit; equality of rights between men and women; equality of rights between children; the elimination of all forms of discrimination; special and priority protection for minors, the legally incompetent and the elderly.

72. The concept of the family in El Salvador is that of a permanent social group founded on matrimony, non-matrimonial union or kinship (article 2, Family Code). The State has an obligation to protect the family, facilitating its formation, welfare, and social, cultural and economic development.

73. The rights established in the Family Code may not be waived, except where legal provision exists, and the duties imposed may not be delegated; any statement to the contrary will be regarded as irreceivable.

74. In regard to the age of majority, in accordance with the innovation introduced in family law, this is now 18 years. Up to 1 October last the age for the attainment of majority was 21 years.

75. The Salvadorian State is committed to foster marriage (article 32, paragraph 3, of the Constitution); in this connection it is important to note that the country has no systematic precedent in respect of invasion of the sphere of personal wishes; clearly, however, marriage is entered into and perfected through the free and mutual consent of the contracting parties, given in the presence of the authorized official, in the form laid down in the Family Code.

76. With regard to the other measures and concerns referred to in article 10 of the Covenant, we would draw the Committee's attention to the initial report of the Government of El Salvador and the addendum thereto submitted to the Committee on the Rights of the Child.

77. Considering that it represents a positive development in the protection of the family in El Salvador, we are also submitting with the present report the document entitled "Innovation in the Family Code and the evolution of family institutions" 2/.

2/ This document is available for consultation by members of the Committee in the files of the Secretariat.

A. Innovations introduced in the Family Code and the evolution of family institutions

Betrothal

78. The promise of marriage, or betrothal, is not widely practised in the reality of our country and some regard it as an obsolete institution that should be abolished from prevailing law. In our Civil Code a mutually accepted promise of marriage is a private act that does not attain juridical status, since it is devoid of legal effect and its accomplishment is dependent on the honour and conscience of the parties to the promise; it was therefore decided to abolish betrothal as a legal institution.

Marriage

79. In the matter of marriage various innovations have been made with a view to encouraging it, as directed by the Constitution, making it easier to exercise the right to enter into marriage. Following an evident trend in contemporary legislation, obstacles and unnecessary formalities have been removed and the requirements have been simplified to the extent possible, all of which will facilitate the celebration of marriage. With this intent, the legal procedures for marriage have been simplified.

Age of majority

80. In this matter there has been an innovation in that the age at which marriage may be contracted has been raised, in contrast to the Civil Code which fixes this age at 14 and 16 years respectively for women and men, taking account only of their reproductive capacity or biological aptitude for marriage. The decision to raise the age was taken because it was felt that people today attain, at the age of 18, a certain maturity as well as biological aptitude, sufficient to understand the full significance of matrimony and thus to achieve stability in marriage, maintain harmonious relations with their partner and fulfil their duties to their offspring. At the same time, the age of legal majority for natural persons has been reduced from 21 to 18 years, for similar reasons; thus, with the raising of the legal age for marriage, the age at which patrimonial and family legal acts may be performed has been unified.

81. Provision has nevertheless been made for two exceptions to this general rule, and they are set out in the last paragraph of article 18. Both situations obey the principles of protection of minors and of mothers, and they are as follows:

(a) If one or both parents are minors who have attained puberty, in accordance with the Civil Code, and have a child together; entirely for the good of the mother and the child; and

(b) If the woman is pregnant; this includes both women under age and women of age to marry, if they wish to marry the father of the child they are carrying when the father is under age.

Impediments

82. The impediment of an existing earlier valid bond as an impediment to marriage is logically retained in the Family Code as a consequence of the monogamous character of marriage, differing only from article 102 (4) of the Civil Code, in which it is which also established, in that the phrase "not legally dissolved" which appears in that text has been deleted, having been considered unnecessary.

Marriage Ceremony

83. The Family Code provides for cases where one of the contracting parties does not understand the Spanish language, and the solution consists in appointing a translator/interpreter, so that the officiating functionary can set down his/her declarations in the marriage certificate and the marriage ceremony preceding it; but it goes further than what is stipulated in the law in force on this point, permitting the officiating functionary to directly translate in the ceremony or the certificate when he and the witnesses understand the language of the contracting party. This power simplifies, and thus facilitates, solemnization of the marriage ceremony. In any case, the contracting party must formulate a minute in his/her own language setting down the words of the officiating functionary, which will be appended to the marriage register and must be translated by the functionary or the interpreter, as the case may be.

84. The Code also specifies procedure when one of the contracting parties is only able to communicate using a specialized language. This provides for persons who are deaf and dumb and are unable to express themselves in writing, but have learned to express themselves through new techniques of communication; in these situations, a person who understands the contracting party should intervene to assist him/her in the acts preceding the marriage as well as the actual ceremony, and who should corroborate the interpretation of what has been said by the contracting party in a minute drafted under his own responsibility.

International private law

85. In regard to marriage and international private law, there are two possibilities that should be examined: one is where a foreigner wishes to marry in El Salvador, and the other is the status of marriages contracted outside El Salvador.

86. In the first case, the Civil Code, in article 120, makes a distinction between foreigners resident for more than five years and those with less time in the country; the former may contract marriage before any authority empowered to perform it, including a notary; but the latter may only be united in matrimony by the competent governor or mayor, who must also corroborate the identity and marital status of the contracting parties. A special formality is also required before the marriage can be performed, consisting in the publication of the banns for the authorization of the marriage; publication of these banns may be waived, however, if one of the contracting parties is of Central American origin and an authorized resident. In all cases the marriage of foreigners in El Salvador must be performed in accordance with the general rules set out above.

87. According to the Family Code, when foreigners wish to contract marriage on the territory of El Salvador, they are subject to the same prohibitions and

prerogatives as Salvadorian nationals. But with the aim of fostering marriage, all the delaying procedures in force that were unnecessary have been abolished, since those wishing to marry must swear before the competent official that they know of no impediment or prohibition.

88. In the second case, that is, the validity of marriages celebrated abroad in accordance with foreign law, nothing is said in the Family Code, unlike the Civil Code, which deals with the question in article 116; in accordance with general rules, such marriages must be recognized as valid in El Salvador if they have been performed in conformity with the laws of the place in which they were contracted.

Second marriage

89. The procedures to be followed by persons who wish to contract a second marriage are regulated in the Civil Code, in Title V, Book I, articles 177 to 181, in conjunction with article 104, and constitute an impediment which takes the form of the obligation imposed by the law upon all widowed or divorced persons who wish to enter into a second marriage and have children from their former marriage under their parental authority, or under their guardianship or curatorship, to proceed to a solemn inventory of the assets of their children of which they have the administration, and which belong to their children as the heirs of their deceased or divorced spouse, or under any other title.

90. For the preparation of this inventory a special administrator is assigned to the children. Such an administrator is also appointed if the children have no assets of any kind under the control of the parent.

91. The above provisions are set out in article 177 of the Civil Code, but the same article also provides that if the widowed or divorced parent is a casual labourer, domestic servant or poor, having no children from the former marriage under parental authority, guardianship or curatorship, or if the children have no assets of any kind of their own under the control of the parent, the latter is still bound to furnish summary information to the competent official so that the case may be declared an exception as appropriate. This is a precondition that must be accomplished before proceeding to a second or further marriage.

92. As it can be seen, the only relevant function of these formalities that must be accomplished prior to second marriage is to ensure legal protection of patrimonial rights, obviating the confusion that could arise between the inheritance of the children of the widowed or divorced person administered by the parent, and assets owned by the latter or that she/he might acquire through remarriage; in the cases of exception, namely, widowed or divorced persons who are poor, who have no children from a former marriage under their authority, guardianship or curatorship, or whose children have no assets of their own, the formalities in question are merely a procedure that causes delay and produces no practical effect.

Effects of marriage

93. Marriage produces two kinds of effects for the spouses:

(a) those relating to the persons of the spouses and their reciprocal rights and duties; and

(b) those relating to patrimony, which include relations of this type between the spouses and between them and third parties;

the first are referred to as personal effects, and the second as patrimonial effects.

94. The rules governing effects of a personal type between the spouses are of a public order, and pursue the realization of the purposes of marriage. Being of this nature, personal rights and duties may not at any time be renounced or delegated by the spouses, or be modified by them, and the basis on which they are determined is the legal equality of the spouses.

95. In the Civil Code, Title VI, Book I, articles 182 to 192 contain the rules pertaining to the duties and rights of the spouses, covering both types of effects, in a perspective still based on the authority of the husband, albeit attenuated. The Family Code deals separately with them, bringing them into line with modern conceptions of family law which establish the juridical equality of the spouses that is enshrined in the Constitution.

96. The first statement advanced by these articles is that spouses have equal rights and duties, which means that the married woman's legal "status" has completely changed, completing a historical evolution from a position in which a woman was regarded as completely incompetent and subject to her husband's authority, to a position in which, although no longer subject to his authority, she was nevertheless to be submissive and obedient to her husband, in exchange for the protection that he was to provide for her.

Marriage settlement regime

97. From 1860, when the Salvadorian Civil Code came into force, up to 1902, when the regime of separation of property that is now valid was established, the only economic regime for marriage was joint ownership of assets, known as conjugal partnership. This regime was of a legal type, since the partnership was constituted by the fact of marriage, giving the husband the right to administer the assets of the wife, as a consequence of his marital authority and the legal incapacity to which she was delivered by matrimony. As defined by article 134 of the Code: "Marital authority is the overall set of rights conferred by the law over the person and property of the wife".

98. The Family Code establishes three legal regimes: the separation of property, participation in acquisitions and partnership in acquisitions. These three regimes are not compulsory in effect since the interested parties may opt for any one of them and may even formulate a different regime. There is broad freedom of choice. These regimes may be changed or modified, or terminated by mutual agreement and replaced by others, through marriage settlements.

Protection of the family home

99. Whatever marriage settlement regime is chosen, the alienation and constitution of real or personal rights over the property that serves as the family home require the consent of both spouses, on penalty of nullity. This rule is intended to operate in situations where the property is owned by one of the spouses, since if it is owned by both spouses, the consent of both is required on account of their joint ownership. This rule for the protection of

the family home responds to doctrinal concerns and international recommendations, and is in conformity with the spirit of the Constitution.

Dissolution of marriage

100. In the Civil Code presumption of death does not produce dissolution of the marriage, but an unusual situation would arise: the spouse of the person presumed dead would remain married and be unable to divorce; technically, a petition for divorce would not be possible, as it would not be possible to bring proceedings against a deceased person. Under our legislation divorce proceedings must therefore be initiated against the spouse before he or she is declared dead, and in such cases, it is a decree absolute that is required to dissolve the marriage, so that the spouse of the deceased may then remarry once the impediment of the union has been removed.

101. The Family Code gives a solution in contradiction with current legislation, that avoids the absurd situation described and also differs from the systems that may be found in comparative law. Under the Family Code system, the marriage is dissolved by the executory sentence pronouncing presumed death following disappearance, the spouse of the disappeared then being eligible to remarry, and if a new marriage is contracted, it remains valid even if the absent person were to reappear. Absence also constitutes a ground for divorce, and if the spouse of the absent partner does not want to initiate proceedings for presumption of death, he or she may seek divorce on the grounds of separation or desertion as failure to fulfil the duties arising from marriage. The solution offered by the Code is a mixed one; if presumed death is declared, the marriage is ended; and the same result may be achieved without such declaration, through divorce, since de facto separation is now accepted as a specific ground for divorce, just as desertion constitutes a failure to fulfil matrimonial duties. This solution was adopted with a view to obviating the need for two sets of legal action; first, proceedings for presumption of death, and second, proceedings for divorce. If a married person disappears and is presumed dead, this fact is sufficient for the marriage to be dissolved; but it is not necessarily essential to obtain a declaration of presumption of death, since the spouse of the person who has disappeared has the right to petition for divorce.

102. Both actual and presumed death result ipso jure in the dissolution of marriage, with the legal consequences that this entails, i.e. eligibility to remarry, surviving spouse's right to inherit, etc.

103. The Civil Code regulates the grounds for the dissolution of marriage separately; in the chapter on nullity it deals with death and with divorce decreed in a foreign country, and has a special chapter on divorce decreed by the courts of El Salvador.

104. Both under the legislation in force and in the Code, marriage is dissolved by divorce. In article 144 of the Civil Code divorce is defined as "the legitimate separation of spouses, ordered by the judge, on legal grounds, the matrimonial bond being dissolved". According to our law, as it follows from the legal definition of divorce, apart from mutual consent, it is stipulated that divorce proceedings may only be originated on the basis of specifically determined facts. Article 145 of the Civil Code enumerates the facts that constitute grounds for divorce, and apart from these, it is not possible to advance any other grounds. This is because divorce law must of essence be

strictly interpreted, since the question itself is exceptional. In effect, the rule in Salvadorian law is the existence of marriage, and divorce is the exception. This may be deduced from what is stipulated in article 97 of the Civil Code.

105. Obviously, the law makes petition for divorce dependent on clearly specified causes in order to be sure that the motive is serious; and establishes a short deadline for the proceedings, on penalty of losing all right to proceed. In this the intent of the legislator is that the determining motive should be in the present or recent past, so as to ensure the necessary stability of marriage.

106. This list of factors constituting grounds for divorce is not arbitrary, however, but follows methodical criteria. In accordance with doctrine, two criteria should be used for the determination of grounds for divorce: that of guilt and that of objective discrepancy. In the first case, acts or facts constituting guilt in that they involve a breach of the duties arising from marriage must be taken into account; while in the second case, acts or facts that do not in themselves constitute a breach of those duties but nevertheless render life in common intolerable must be considered, and this is the criterion adopted by the Family Code.

Non-matrimonial union

107. In articles 118 et seq., rules are laid down to govern the stable union between a man and a woman who have not contracted marriage, to give effect to the constitutional precept ordering regulation of "family relations resulting from the stable union of a man and a woman" (article 33 in fine), always bearing in mind the other provision of the Constitution (third paragraph of article 32) that "The State shall promote marriage, but the lack of this shall not affect the enjoyment of the rights that are established in favour of the family."

108. In the Salvadorian context, one common source of problems is that an unmarried couple acquires a family home through the efforts of both partners, but the contract of sale is made out only in the name of the husband. This and other similar problems give grounds for economic regulation of non-matrimonial unions, for what usually happens is that before liquidating their joint assets, the named holder of the deeds to the property sells it; in other cases he may expel his partner from the home and let it, or mortgage it and it is then repossessed. To complete protection of these families the provision of article 46 has been made applicable to them, whereby the alienation and constitution of real or personal rights over the property serving as the family home require the consent of both spouses, on penalty of nullity.

109. The term of cohabitee or life partner is in line with the current trend - followed by our Constitution, as evidenced by paragraph 2 of article 36 - of avoiding any pejorative terminology evoking stigmatizing attitudes that are more seriously damaging to minors and to women. Language charged with deprecation only fosters intolerance and injures personal dignity, in open violation of the principles of the Constitution. The correct approach is to assume an objective and neutral attitude, observing social realities and generating the most practical rules to resolve the most acute problems, laying firm foundations through this attitude for an advanced democracy, that will extend the protection of its institutions to the family members most in need of it - children at risk,

deserted mothers, elderly people in poverty, and those excluded from society - in order to fulfil the supreme values of our Constitution.

Filiation

110. Book II of the Family Code deals with filiation and family status. The whole of this book is built around the principle of the equality of children and in pursuance of the mandate of article 36 of the Constitution. It comprises two titles: the first, governing filiation; and the second, family status.

111. The provisions of Title I are divided into three chapters; the first governs matters common to the other two chapters; the second chapter develops the law relating to filiation by consanguinity, regulating the various issues involved in different sections; and the third chapter sets out separate provisions governing adoptive filiation.

112. The first title deals largely with the constitutional precept that secondary legislation shall be enacted to determine ways of investigating and establishing paternity. In the drafting of these rules, special care has been taken to ensure compliance with the principle of equality between children. The title has therefore been structured in such a way that it has been possible to eliminate differential classifications of children from the Family Code, so that it is possible to know whether reference is being made to children born within or out of wedlock by the nature of the provisions enacted, none of which makes use of discriminatory classifications, although these still exist in the secondary legislation in force, which refers to children as legitimate, recognized, natural, simply illegitimate, or born of incestuous or adulterous unions. Another principle that informs the regulation of filiation is that of the interest of the child, which it is sought to safeguard.

Equality between children

113. In legislation on parental authority, the principal of equality between children first appeared in its full form in the constitutional reforms of 1944. In the Constitution of 1950 (art. 181), it was proclaimed in a relative form, i.e. only in regard to education, assistance and protection by the father; in this form it was maintained until the present Constitution came into force, which guarantees this principle in absolute form in prescribing that "children born within or out of wedlock and adopted children shall have equal rights with regard to their parents".

114. The Family Code does away with the principle of "hierarchy" in filiation, by proclaiming that children have equal rights and specifying that filiation may be by consanguinity - without any kind of qualification - or by adoption, and that both produce the same legal effects.

115. The present legislation establishes a distinction and different treatment for children born within and out of wedlock, from the qualification assigned to them to the preferential treatment accorded to the former.

116. Children born in wedlock are legitimate, and are protected by the law; all rights are therefore guaranteed to them. Those not so fortunate as to be born of matrimonial unions are illegitimate, and because they are "outside the law", the rights assigned to them are less broad and important. Their filiation is

only established in respect of their mother and it is in respect of her that they may derive rights and establish filial relations. If, in the best of cases, they are recognized by their father, their juridical status is better, but such children can never attain the same status as a child born within wedlock to the same father, or any other child protected under the marriage.

117. The sanction intended by the legislator to fall on the unmarried parents in practice falls on the children. This reality in El Salvador is dramatic, with a very high rate of illegitimacy (56%), increasing irresponsibility among fathers, and large numbers of minors abandoned or deprived of physical or moral protection.

118. The authors of the Constitution in 1950 tried to introduce parity between all forms of filiation, but the results were not satisfactory. The 1983 Constitution insists on such parity, which, pursuant to the Family Code, must be full and absolute, there being no claim that can be asserted to take precedence over the biological truth, which is the point of departure for equality between children. It is considered that families born within wedlock will not be at any greater risk if rights are granted to children born out of wedlock. It is acts of dislike, intransigence or disloyalty that break the bonds of marriage.

119. It must be stressed that the Family Code does no more than reaffirm the constitutional mandate of equality of rights between children, since the Constitution takes precedence over the Civil Code and its express regulation overrides any provisions that infringe or run counter to this precept.

120. Since 1983, when this Constitution was promulgated and the principle of equality of rights between children was established, the country's courts of first and second instance have issued rulings opposing the right of non-matrimonial children (natural offspring) to inherit ab intestato when there are children born within the marriage (legitimate offspring), which is evidence of their opinion of this principle and the value of constitutional law, giving precedence to article 988 of the Civil Code over article 36 of the Constitution.

121. Such judicial opinion is manifestly contrary to the nature and intent of the constitutional provision and the supremacy of the Constitution as the fundamental norm that takes precedence over all other components of positive law.

Adoption

122. Adoption is a procedure which completely detaches the adopted person from his family of origin and brings him into his new family with the same rights and duties as a child born within wedlock to the adopting parents, or simply a natural child, in the case of our country in particular, in which all classes of children are treated as equal, by provision of the Constitution. This replaces the original filiation of the adopted child, creating a status familiae, and produces complete equality without the proviso of biological filiation.

123. Adopted children become part of their adopters' families in respect of all effects. This mode of adoption radically alters the restrictive system of the present law: "Adoption produces only the juridical bonds for which the law expressly provides" (art. 15), and overrides the limited scope of its provisions for filiation: "The juridical family bond arising from adoption extends only to

the adopting and adopted parties and the direct descendants of the latter by consanguinity" (art.1). This type of adoption confers full rights and optimally satisfies the purposes of this institution today, as well as giving real effect to the principle of equality between children embodied in the Constitution.

124. At the same time, according to the provisions of the Family Code, the adopted party is totally and absolutely detached from his consanguineous family, no longer retaining any rights or duties in relation to it. Doctrine and practice in the countries that have taken up this mode of adoption concur that the suppression of family ties by consanguinity is essential for the security of the bond of adoption and the integration of the child into his new family, shielding it from the interference - not always disinterested - of the child's blood relations. However, the impediments of kinship to matrimony are maintained.

125. If the finality of this mode of adoption is that adopted children should be fully assimilated to children born within marriage, or in our case to consanguineous children, this objective would not be properly achieved if it were not to be irrevocable. This fundamentally takes account of the child's interest by ensuring a secure and permanent solution. As already indicated, the granting of adoption is an act of public authority, conferring a family status which of essence and in the interest of family stability requires the condition of irrevocability.

126. It must be borne in mind that the characteristic of irrevocability of adoption does not prevent limits being imposed on certain situations that affect the child's interest, or on the irregularities or abuses that have given cause for alarm in our society. In the first place, it must be remembered that revocation, in the classic definition of Vicenzo Pannucio, is an act whereby the subject who has carried out an act eliminates its effects. This possibility is restricted to give the maximum degree of security to the adoptive relationship in question: it may not be terminated at the mere wish of one of the parties, nor even by agreement between the adopting and adopted parties.

127. However, the fact that full adoption is irrevocable does not cover the possibility that it may be annulled.

128. The Family Code specifies that adoption puts an end to the parental authority to which the child was subject. The current law states that the child's adoption produce his legal emancipation, a statement that has given rise to numerous complex issues. It has been considered preferable to describe the effect produced by adoption.

129. Adoption gives parental authority as of full right to the persons adopting the child. It was not considered right to use the wording formulated in other legislation whereby the parental authority of the biological parents is "passed over" to the adopting parents, since there are cases where a child may not be under any parental authority at the time of adoption, and in such cases it would not be possible to refer to transmission of the kind.

130. Up to the present our legal regime has treated adoption as a parafilial institution. Adoption shall fully reflect the theoretical assumption of equality contained in the provision that filiation may be by consanguinity and by adoption, and implement to its farthest consequences the constitutional

principle of equality between children, which alone will produce complete and seamless integration in parent-child relations. The prerequisites that must be fulfilled by the adopting persons and the child to be adopted are also specified.

Adoption by foreigners

131. In addition, foreigners wishing to adopt must be able to show that a public or state-run institution for the protection of children or the family in their place of domicile will oversee the interests of the adopted child. In view of the practical difficulty of ensuring that the Salvadorian State is able to take adequate responsibility for the interests of Salvadorian minors abroad, the adopting parties must be able to furnish evidence that a reliable body will take care of these interests. This requirement must be accompanied by official contacts by the Salvadorian institutions responsible for the protection of minors with their counterparts in the foreign country, to ensure effective collaboration. This is not an exaggerated demand, as the countries to which adopted children usually emigrate have state-run entities that ensure the protection of children, irrespective of their nationality. This condition will not be required when the adopting parties have been resident in the Republic for at least the five years prior to their application to adopt.

132. It is stipulated that an investigation of adoption applicants must be carried out by a interdisciplinary team. In the case of foreigners, to guarantee the credibility of such vetting, the Family Code insists that where investigation is done outside El Salvador, it should be carried out by specialists from a public or state-run institution in the applicants' place of domicile that is concerned with the protection of children or the family, or by professionals whose conclusions are endorsed by a body of this kind. In this case, collaboration can best be achieved by direct contact with such institutions.

Family status

133. To attempt to clearly define the concept of family status, it is necessary to refer to the more generic concept of personal status. This has been defined as the set of qualities that are recognized by the law as liable to produce juridical effects. They may be divided into political status: the position of the individual vis-à-vis the State, resulting in classification as nationals and foreigners; and civil status, that is, the juridical position of the individual in society and in regard to relations in private law.

134. Civil status may refer to the individual per se (the main elements being age and mental health) or in relation to the family. The latter constitutes a person's family status, that is, the place or juridical position of the person within a particular family.

135. The generic concept of civil status is synonymous in various legislations with legal capacity. Thus, in article 303 of the Salvadorian Civil Code it is defined as "the quality of an individual in regard to his capacity to exercise certain rights or contract certain civil obligations". It should be noted that both rights and obligations may be varied in nature. Civil status is the presumption of people's capacity to act or exercise in spheres other than their political rights.

136. Unlike the Civil Code, the Family Code does not, as is logical, deal with the civil status of the individual, but with one aspect of it, that of family status, which it defines as: "the juridical quality of a person in relation to the family and in respect of which the law assigns certain rights and duties". Such status, according to doctrine: (a) is a consequence of family juridical bonds; (b) gives rise to subjective family rights and corresponding duties; and (c) in some legislations has a bearing on the individual's legal capacity.

137. Family status is considered an attribute of the legal personality of natural persons; it is an abstract concept that does not allude to any specific family relationship, but rather to various relationships and to the elements common to all of these.

Rights and duties of children

138. Two propositions are covered in this chapter. First, recognition of the fact that children, as such, have certain rights of their own that must be respected not only by their parents but also by the community and the State; and secondly, indication of the duties that they must fulfil as active subjects in a parent-child relationship. We know that all rights carry corresponding duties; but in this chapter some of the rights and duties that are established do not exactly correspond, since there is not and cannot be any equivalence between the nature and quantum of provision, and duty. The reason for this lies in the fact that the parties to the parent-child relationship are not, in most cases, on the same level, especially when the children are minors.

139. Human beings have an inalienable right to existence, integrity of person, and to find the necessary means for subsistence and development. From the situation of absolute dependence of children during their minority, the subjective necessity arises to provide whatever may be needed to accomplish their full and comprehensive development as persons.

140. The first article of the chapter is based on a constitutional principle to which reference has already been made, that of equality of rights between children. In this chapter the content of article 36 of the Constitution, to the effect that: "All children, irrespective of the nature of their filiation, shall have the same family rights and duties" is reaffirmed and expanded. This provision of paramount importance and far-reaching implications is one of those that contribute to the objective of equality in family relations, creating a family structure in which the value of justice is present.

141. The law governing filiation in force up to the present is "a rare example of the survival of a system universally repudiated" as being notoriously unjust.

142. In the matter of the duties of children, the Code does not make any substantial alterations to the provisions already contained in articles 230, 231 and 232 of the Civil Code. However, their rigour has been tempered and other duties have been extended on the basis of the new concepts of family law and the law applicable to minors. Children owe a duty of respect, but also of consideration and obedience to their parents, as long as they remain under their personal care. The duty of relief has been replaced by that of assistance, which is broader, emphasizing that this duty must be accomplished in all circumstances where required, and especially in old age. This obligation, as in the Civil Code, extends to other ascendants if there are no parents.

143. A novel provision to which attention is drawn is the duty of children to contribute to the family's expenses in accordance with their means, that is, if they have property or income, as long as they are living with their parents.

Parental authority

144. The wording of this title replaces the traditional term of patria potestas, which represents more than a purely semantic change.

145. Patria potestas derives from Roman law, but it is one of the most highly developed institutions of contemporary family law, although its evolution over time has been slow. Its overall history amounts to a process of gradual debilitation of paternal authority. Today its conception is not as an institution for the benefit of the father, but rather as an obligation, or better still, a series of duties established vis-à-vis children.

146. In the Salvadorian Civil Code of 1860, patria potestas was clothed in a romanticizing and patriarchal aura that had little to do with the realities of the time in which that Code came into force. Authority was vested in the father and denied absolutely to the mother. As already mentioned, this institution underwent a slow and uncertain evolution and it was not until 1972 that substantial modifications were made to the earlier regime. Above all, authority was no longer exclusively vested in the father but shared with the mother if the children were legitimate; while in the case of natural children, a father voluntarily recognizing his children was granted authority, but only in the absence of the illegitimate mother.

147. Notwithstanding the importance of these reforms in respect of the titularity of parental authority, there was no change in its traditional orientation, and its conception and content remained in tact. Article 252 of that Code still defined patria potestas as "the series of rights given by the law to legitimate parents, by mutual agreement, or to one of them in the absence of the other, or, where relevant, to the illegitimate mother, over their unemancipated children".

148. With regard to content, parental authority in the present law is still a series of rights relating strictly to patrimony. Thus, it is the duty of both parents: to administer the assets of their children who are minors and not emancipated; the usufruct of the assets constituting the peculio adventicio ordinario (that is, all assets except those referred to in article 255 of the Civil Code); and to represent their children in the judicial or extrajudicial acts in which they are required to intervene.

149. With regard to rights of a personal nature, which in almost all legislations are included in the institution of parental authority, Salvadorian legislation, following the example of Chile, regulates these rights outside the framework of parental authority, in Title IX of the Civil Code for legitimate children, and in Title XII of the same body of law for illegitimate children.

150. The content of these titles was updated in the reforms of 1972, with modification of articles 230, 233, 234, 235, 244, 245 and 246, with the object, as already indicated, of facilitating the solution of family problems resulting from divorce, annulment and de facto separation, providing for the personal care of the children and permitting judicial intervention and intervention by the

Public Counsel General of the Republic for the protection of minors; and to give effect to the principle of the legal equality of the spouses, sharing equally between the father and the mother the rights and duties contained in these revised articles. Article 289 of the Civil Code was also amended to confer the same rights as granted to illegitimate mothers upon natural fathers.

Maintenance allowances

151. The Family Code understands by maintenance allowances the provision of economic resources not only for the sustenance of life, but also for clothing, housing and the maintenance of health, and, in the case of minors, maintenance also covers the costs of education, recreation, and whatever training is needed to acquire a trade or occupation, and must be paid up to completion of study, provided the recipient has not passed the age of 25 years.

152. As it will be appreciated, the concept of maintenance adopted by the Family Code is a broad one, and thus does away with the classification of maintenance payments as appropriate and as necessary that is contained in the Civil Code, in title XVII of Book I. This is because it has been endeavoured to the extent possible to meet the needs of the recipient as a human person in today's society, and the criterion of social position as a determining factor in setting the amount of maintenance for certain persons has been abandoned. The concept of maintenance now seeks to ensure real and humane protection of family members, and has no means-based orientation.

153. In this connection, most of the subjects relating to maintenance set out in the Civil Code have been reserved, abolishing the assimilation to maintenance of any large gift, considering that in the context of today the obligation to maintenance is clearly incumbent on the family, arising from the solidarity and bonds of kinship that exist between persons.

154. It has also been considered inappropriate to regulate the rights of donors in the Family Code, since the Civil Code provides in article 1284 that those who donate all their assets must reserve sufficient to provide adequately for their own subsistence, and failing this, are entitled to be assigned by the donee an amount deemed appropriate, in ownership or in usufruct, taking into account the amount of the gift.

155. In the maintenance relationship there may be a plurality of grounds on which allowances may be claimed, as there may also be a plurality of maintenance recipients and providers.

Maintenance allowance for pregnant women

156. A novel form of maintenance has been introduced to protect children from the moment of conception, as prescribed in international agreements, in line with contemporary legal concepts and with the realities of Salvadorian society, in which fathers so often desert a mother and child. Pregnant women have therefore been given the right to claim maintenance from the father of their child throughout pregnancy and the puerperium, including the costs of childbirth, so that the child may be born in the best possible conditions for its overall welfare and development. Protection is thus afforded the mother and the child she is carrying, without prejudice to the child's right at birth to claim maintenance from the father.

Guardianship

157. The Civil Code retains, drawing on Roman law and registration laws, the distinction between guardianship and curatorship, which, as will be explained, has no raison d'être, since both institutions are subject to the same general rules; hence the Family Code no longer makes these distinctions, bringing these provisions together so that guardianship covers both minors and persons legally of age but declared incompetent and not subject to parental authority.

158. The Civil Code maintains two similar institutions, guardianship and curatorship. In general it does not establish any fundamental differences between them justifying the existence of both, which is solely historical. The two institutions are effectively subject to the same rules in regard to:

(a) the appointment of the guardian (arts. 374 to 392);

(b) the procedures and formalities to be carried out in the exercise of this function (arts. 393 to 409);

(c) the administration of the assets of the ward (arts. 410 to 443);

(d) the incapacity, excuses, removal and remuneration of the guardian.

159. The persons who exercise guardianship or curatorship are called in law tutors or curators, and most often guardians; and both guardianship and curatorship cover not only the assets but also the personal welfare of the individuals subject to them (arts. 359 para. 2 and 361).

160. In the current legislation, both guardianship and curatorship take care of the persons and the assets subject to them, and are governed by the same general rules. As their names suggest, the object of guardianship (tutela, from tueri, to defend and protect) and curatorship (from cura and curatio, care), is to protect those who are legally incompetent. In today's legislation, these functions have been organized in the interest of the person to be protected; it is the moral and pecuniary interests of that person which are taken into consideration by the law and not those of the tutor or curator, and for which the law provides until incapacity is terminated.

161. The only difference between these two institutions is that minors under age who are not under parental authority are subject to guardianship (arts. 362 and 369), while persons legally of age who are at risk for reasons of insanity in the administration of their assets, and deaf-mute persons unable to communicate in writing are subject to curatorship (arts. 363, 457 and 469).

162. For the reasons that have been explained, the Family Code maintains guardianship only.

B. General aspects

Practical effect

163. The Family Code is a compendium of the recognized substantive rights of the family, minors and senior citizens, and, as such, is the abstract legal norm that deals systematically with all the reciprocal rights and duties of the

members of the family group. Consequently, no immediate practical effect is to be expected, the effect being in the medium and long term, since this law is of essence confined to establishing what should be the norm in family relations.

164. The Family Code does not create a family jurisdiction, as this is a matter that cannot be regulated in this body of law, since it falls, for technical reasons, within the scope of the Judicial Organization Act; but we may say in this connection that the Government of El Salvador does wish to establish such a jurisdiction. We would also mention that the Ministry of Justice has drafted a bill on family procedural law, which will shortly be submitted to the Legislative Assembly for approval, which incorporates all modern principles of modern procedural doctrine, establishing a flexible, oral, informally conducted procedure that gives broad faculties to the judge to avoid handing down inhibitory judgements.

Specialized jurisdiction

165. The Code is part of the reform of the system for the administration of justice. Legislative reform in the area of procedural family law will be better understood if it is seen in the context of the other reforms instigated by the Ministry of Justice, in the areas of penal and procedural law, administrative law, agrarian law, and especially of family law relating to minors.

166. We must record that:

(a) The Act establishing the Salvadorian Institute for the Protection of Minors was passed on 11 March 1993 (Daily Official Gazette 31-111-93 No. 63, Vol. 318). This Act attempts to draw together the institutions that give social protection to minors, entrusting them with responsibilities or restricting their rights;

(b) The Family Code was adopted on 11 October 1993 and came into force on 1 April 1994. The Code regulates the substantial rights of the members of the family, minors and senior citizens;

(c) The Young Offenders Bill is currently before the President of the Republic for approval. This is a bill which, like Book V of the Family Code, on minors and senior citizens, takes up and develops the principles and rights of the Convention on the Rights of the Child, which was adopted by the United Nations on 20 November 1989 and signed and ratified by El Salvador on 26 January and 27 April 1990; and other conventions and international doctrine on this topic.

These instruments, when they come into force, will abrogate, inter alia, the Minors' Code, the part of the Civil Code that deals with family law, and the Adoption Act.

The Government's concern for the family

167. The Salvadorian State recognizes the family in its diverse forms as the basic unit of society and as an important agent for social, political and cultural change. Within its programmes of social protection, the Government is therefore promoting better conditions for family formation and family life; establishing the relevant specialized institutions to plan, implement and

evaluate programmes to further health, education, family integration and social equity; strengthening social welfare services; involving the community and urging its cooperation with efforts to protect the young and the old in the family; endeavouring to reach out to the deprived populations in the rural areas and urban slums which receive little in the way of services, and giving emphasis to the reduction of morbidity and mortality among infants, children and mothers; not promoting abortion as a method of family planning; raising the standard of education and promoting equality of rights in all spheres of economic, social, cultural and political life.

168. From the moment the preparation of the Family Code was begun, it was felt by those responsible for its drafting that in order for the rights it sets out to establish for the members of the family to be effectively ensured, it was necessary that procedural law and the Administrative Organization Act should be revised, as well as substantive law (the Family Code). In other words, those responsible for the initiation and execution of the work that has gone into this reform have always been aware and preoccupied with the need to create or reinforce the organizational provisions of (i) the Organization of Justice Act, and (ii) the Public Ministry Organization Act, in regard to the Office of the Counsel General, inter alia, the first with a view to creating a special jurisdiction for the family, establishing the competence of family judges and magistrates throughout the Republic and organizing the functioning of the courts; and the second to create posts and establish the functions of family lawyers.

Article 11. Right to an adequate standard of living

169. The construction of housing in El Salvador is, according to the Constitution of the Republic, of "social interest" (art. 119). The State shall endeavour to permit the greatest possible number of Salvadorians to become home owners. It shall undertake to see that every farm owner shall provide resident workers with a sanitary and comfortable home and adequate conditions for temporary workers, and shall provide facilities to enable small owners to do so.

170. In order to convey to the Committee the principal problems experienced and currently encountered in El Salvador in regard to the right to housing, we describe below the main features of the trend in recent years.

171. The situation in the housing sector up to 1989 presented, very briefly, the following characteristics: an accumulated deficit in new housing and improvements to approximately 470,000 dwellings, which meant a shortage of housing or lack or qualitative elements, 37% of which applied in the urban areas and 63% in the rural areas; these figures contrast with the annual rate for house building, which, for 1985 to 1989 inclusive, was an average of 10,500 units, and was not sufficient to meet the demand for new housing. By virtue of population growth alone, some 24 000 new units of housing are needed annually.

172. This deficit was also affected by large-scale flows of migration. Other problems generated by the war, as well as the effects of the earthquake in 1986, created disruption in the cities and brought enormous pressure to bear on places that were not prepared for such migration.

173. The difficult socioeconomic situation, the high price of housing, further increased by inflation and the exigencies of the formal financial system, made access to home ownership difficult, so that 64.3% of the population, comprising not just the low income groups but the middle classes as well, were owners of their homes, and gave rise to an increase and proliferation of unauthorized settlements.

174. 67% of families with income levels below two minimum monthly wages (US$ 135) were affected by this housing deficit, living mostly in improvised dwellings, very often with no basic services or any possibility of access to the formal system of housing finance.

175. Families with the equivalent of two to three minimum monthly wages, 21% of the population, were assisted by the State-run savings institutions (FSV and INEP); while families with more than three minimum wages, 12% of the population, had access to credit from the savings and loan associations whose projects were financed by the National Housing Finance Bank (FNV).

176. To serve the demand for housing, there was a housing finance system known as the save and loan system, accompanied by certain financial institutions in the public sector, operating with no coordination and each defining its own policy. On the whole, the entire system functioned with subsidized interest rates, which resulted in a high level of inefficiency and hidden and regressive subsidies, with serious effects on national saving. For its part, the State had no integrated policy for the sector, resulting in a complete lack of coordination and little capacity for control.

177. Most of the housing produced was built by the private sector, but the State also played an important part in building through autonomous institutes, such as the Institute of Urban Housing (IVU), which were highly inefficient in their functioning and the subsidies implicit in their sales prices, so that it was increasingly difficult for the private sector to compete in the housing market for families with low incomes.

178. The legislation in force was beset by many formalities and prerequisites, many of which were impractical or obsolete and as such served as barriers of deterrence to all who did not have the economic means or sufficient cultural background to cope with them.

179. The requirements of urban development and building standards were also those of a developed society and not at all compatible with the normal Salvadorian environment (except in the big cities).

Strategies

180. Given the situation up to 1989, and recognizing that the problem of housing is fundamentally a problem of poverty, the Government decided in 1990 to tackle the challenge of undertaking an ambitious conceptual and institutional reform to resolve it. In order to carry out this reform, strategies were defined for implementation in the short, medium and long term, based on the following aspects:

(i) Fundamental concepts

Generate the conditions for a responsive, efficient housing market, lucrative for the private sector and satisfactory for buyers.

The State to be involved only in coordination, regulation, promotion, and above all, facilitation of sectoral development.

Elimination of exclusion from access to housing of the most vulnerable groups in the country.

(ii) Key areas

Restructuring of institutions in the sector.

Restructuring of the existing system of finance for housing and creation of a housing finance system free of distortions and providing cover for the lowest income groups in the country.

Consolidation of private ownership in the lowest income communities.

(iii) Aims pursued

Remove the production and execution of house building from the State.

Facilitate the operation of individual and social forces in efforts to satisfy their housing needs.

Create a framework for equality of opportunities.

Initiate a sustainable process in line with individual and social priorities and dynamics.

181. The fundamental condition observed in regard to this strategy was to devise a housing Plan that would fit into the economic and social objectives of the National Plan, based on a philosophy of equality of opportunities (the outline of which is presented in annexes), and which was to:

(a) make its first priority to arrest the growing housing deficit, starting from the assumption that the development model would in the short term generate an improvement at the poorest levels;

(b) be comprehensive in scope, that is, address coherently the financial, technical, legal and institutional aspects;

(c) be realistic and devoid of any demagogic approach claiming to be able to "solve" the problem during the legislature of one Government.

182. Consequently and in understanding the need to have a national housing plan consistent with a comprehensive long term strategy, as part of the modernization of public administration, structural adjustment and the privatization of the financial system, it was decided to split the problem into three major areas of action:

(i) in regard to the public sector, modernizing and decentralizing the institutional and service framework of the sector, which, as a result of poor coordination and administration among its agencies, did not have the technical and administrative capacity for execution and was therefore identified as inefficient;

(ii) in regard to the formal sector, with the aim of maintaining and increasing private production of housing for the formal market, identified as the population with a family income of more than two basic wages, for which the traditional pattern of production and sale of finished units through building firms has proved to be effective; and

(iii) in regard to extreme poverty, gradually reducing the housing deficit for the population with incomes of less than two basic wages, whose low purchasing power and irregular income has not enabled them to have access to basic housing solutions.

The situation in 1993

183. As a consequence of the strategy and initiation of the Plan, results have been achieved in regard to the legal, institutional and formal financial aspects, and extreme poverty.

(a) Legal aspects

184. In this field it was decided to modernize all aspects of the law that were preventing change. Hence amendments have been made to the Urban Planning and Building Acts, the laws on supplementary titles, PRONAVIPO, and the Property Registry, as well as to certain provisions of the Civil Code and notarial laws.

185. It was also necessary to enact laws to cover new programmes - the system of housing finance and the housing support system - as well as a temporary law on incentives to legalize land ownership in marginal areas.

186. The legislation on building and the professional liability of builders is currently being revised.

187. Commercial laws have yet to be modernized to allow for new mass property transfer operations such as fiduciary certificates of property shares, people's mortgages, permission for certain types of cancellation clauses, lease of buildings, the Tenancy Act, etc.

(b) Institutional aspects

188. In this area the Vice-Ministry for Housing and Urban Development has been totally restructured, changing its old emphasis as an executing agency to strengthen it as the governing authority for the sector, with regulatory and coordination functions.

189. Since the Plan was designed for the long term, it was also necessary to have pluralistic agencies that would generate the consensus needed to ensure its

continued execution under successive legislatures. The National Housing Council (CNV) was therefore set up as a consultative organ with a broad spectrum of representativity.

190. Responsibility for the building and financing of housing was also withdrawn from Government agencies; they were then liquidated and their assets, once restored to order, transferred to the new entity known as the National Public Housing Fund (FONAVIPO).

191. The most important municipalities have been strengthened to permit decentralization of regulatory functions which were hitherto exclusively carried out by the central Government.

192. Efforts have been made to support and develop nongovernmental institutions, so as to increase the scope and qualitative coverage of their activity.

193. Finally, a new and completely modern Property Register has been established, providing a high degree of legal security and facility of use, incorporating in addition to the traditional register of documents a graphic component which fits exactly with the National Land Registry.

(c) The formal market

194. The strategy for the formal housing market seeks to improve the operation and stability of the system. The type of limitations observed in this area are more related to financial aspects and the promotion of a free market, for which the following measures have been taken.

195. In order to extend mortgage coverage to all classes of the population, the Central Reserve Bank (BCR) has compensated the holdings in the financial system and privatized the commercial and financial banks so that the banks are able to provide a range of services, with liberalized interest rates and suitable schemes for long-term investment, such as the term deposit certificates for housing for which the financial system pays an above-normal interest rate, so as to extend the mortgage credit coverage that can be offered to applicants for help with housing.

196. The BCR has also increased the windows and private resources for the financing of housing through the creation of the Investment Credit Fund (FCI), bringing the Commercial Bank into the financing of house building and buying, in addition to the traditional savings and loan associations, and creating some instruments that are more attractive and stable than short-term savings for accumulating funds. These measures have been a real success, and the volume of resources and range of options available have outstripped the projections made when they were devised.

197. The new modalities for long-term financing in the form of the "Long-term system of financing with adjustable instalments and a special grace period" have been adopted by the Social Housing Fund (FSV), an agency which collects contributions of 5.5% of the minimum wage in the private sector, which will enable a worker on the minimum wage to acquire a home to the value of up to 50 minimum wages, which is higher than the level of 35 minimum wages in force up to 1992. Another of the advantages of this modality of financing is that it

automatically creates an savings account for the contributor, with an annual rate of capitalizable interest of 9% (more than the 0.5% interest rate in use up to 1992), as part of the fund for disability, old age and death. The most important innovation in this modality is that any increase in contribution is determined by increases in the minimum legal wage, which ensures that payment will be within the family's means. In this the valuable experiences of Colombia, Chile and Mexico were taken into consideration.

198. It is hoped that the Commercial Bank will introduce systems of a similar kind, that will provide finance with better conditions of payment, with mortgage loans at market rates and easier access to housing finance, and that it will replace the State as it withdraws from the building and housing finance activities which it formerly carried out so inefficiently and detrimentally to the market.

(d) Extreme poverty

199. The strategy on extreme poverty starts from the need for understanding of these sectors and the realization that the traditional approach of building houses is not a viable means of resolving the deficit. This is not only because it requires a volume of resources that is not available, but also because it would alter the natural form of economic operations in this sector by imposing credit deadlines and repayment instalments that are incompatible with its realities.

200. The first basic premise that has been established is therefore that the family itself should give priority to the provision or improvement of housing. This is essential, for such is the level of needs for survival that focusing economic resources on housing is only possible if the family is prepared to sacrifice meeting some of its other needs.

201. A second basic premise in looking for solutions to benefit the greatest possible number of families is breakdown of the housing deficit to include a territorial element: area of ground space, plus five elements of construction: hygienic flooring, safe roofing, waste water disposal, access to safe drinking water, and energy. Using these elements it is possible to set targets that can be met using the same approach, rather than through the construction of units of housing.

202. This makes it possible to optimize resources to meet the objective of the world housing strategy, which differs from the traditional approach previously in use. The actions covered by the strategy are:

(i) Area of ground space

203. Now that this element has been identified as fundamental for initiation of the process, the highest priority is attached to it. The legal and regulatory framework has been amended to enable title deeds of ownership to be attributed in the marginal areas and illegal settlements or building plots. Various mechanisms are available, operated entirely privately, ranging from the exercise of acquisitive prescription to financing by the owner, with the possibility of partial guarantees by the State and rebates, also partial, in the financial system.

204. A new computerized system for the registration of immovable property has been installed and provides for legal security and easy and efficient registration. Thus (according to MIPLAN-ENHPM 1992), 66.9% of the population are owners of their homes 3/, which represents an increase of 24.8% as compared with 1989.

(ii) Quality of housing

205. Once a family owns the ground for its home, it is free to decide on priorities for improvement(s) and/or the installation of basic services, and on the designs and specific materials to be used, in compliance with the basic regulations on urban development and building. The role of the State has been to ensure that sufficiently flexible modalities are available to guarantee access to resources for this group of the population.

(iii) Institutional aspects

206. From this there follows the need for institutional bases and instruments for this action, that is, a State agency to channel financial resources through intermediary credit agencies. The National Public Housing Fund (FONAVIPO) has been set up for this purpose, and all the existing public funds scattered among different places in the country made over to it. FONAVIPO is financed by two funds, the General Fund and the Special Fund, so that it is able to obtain financial resources from different sources that will be used depending on the type of operation for which these funds were established.

207. The housing support programme has been devised to help the families in greatest need by giving them additional State financial support for housing. This system has progressed through all stages, from the adoption of the Public Housing Fund Act, implemented through Decree No. 258, of 28 May 1992; the beneficiary population has been identified and service is being provided through the following modalities:

Modality I. Basic access (grant for the acquisition of a housing plot), for settlements in illegal communities where legalization is not feasible, or resettlements under the New Organized Settlements Programme (NAOS) run by the Vice-Ministry for Housing and Urban Development. Under this modality, the pilot plan to consolidate the implementation of the housing support system was carried out from December 1992 to April 1993.

Modality II. Improvement. Grants are intended for the building or improvement of dwellings, and the installation of basic private or communal services, for families owning a registered plot in a social housing development. This modality is now being administered through the intermediary institutions authorized by FONAVIPO.

Modality III. Finished housing (grant for the acquisition of a new or existing home which already has basic services) for families who do not have a home of a minimum habitable standard. This modality has yet to be introduced, but it is hoped to do so within the next few months.

3/ This includes 55.9% owners and 11.0% paying in instalments.

208. At the same time, 22 authorized institutions have been incorporated into a network to serve the target population. These institutions are located at various places throughout the country and their function is to bring the services of FONAVIPO to users. These financial intermediaries or agents are NGOs, cooperatives, commercial banks, financial agencies, agents for the sale of legalized building plots and private firms selling real estate under the housing finance system.

209. A privately issued credit card has been developed for materials, with a credit limit equivalent to the value of one of the elements of construction and the possibility of subsequent use for the other elements as credit becomes available through the family's repayments. This credit card will start to be used as from next September.

210. Up to 1993, the present national strategy for housing has succeeded in achieving changes, reforms, implementation of new programmes, etc., as shown in the figure below.

National housing strategy 1990-1994

Equality of opportunities

- Generate conditions for a responsive, efficient, profitable and satisfactory housing market
  - Increase supply
  - Meet demand
  - Strengthen the production of housing
- Eliminate exclusion form access to housing
  - Standards reforms
  - Legal reforms
  - Fiscal reforms
- Participation of the State in the roles of coordination, standard-setting, facilitation, promotion and assistance
  - Strengthen control authority
  - Prevent distortion from participation by the State
  - Channelling of financial resources
  - Generate a presence in the community

Article 12. Right to physical and mental health

211. Article 65 of the Constitution provides:

> "The health of the inhabitants of the Republic constitutes a public good. The State and individuals are under obligation to see to its preservation and restoration.
>
> The State shall determine the national health policy and control and supervise its application."

In order to fulfil this function, the State, through the Ministry of Public Health and Social Welfare, is responsible for the health of the population; in this connection, the Constitution stipulates in article 41 that it is the duty of that Ministry (i) to give direction to Government policy on public health and social welfare; (ii) to establish and maintain collaboration with the other ministries, public and private institutions and professional or service groups that carry out health-related activities.

212. It is thus responsible for formulating, implementing and advising on programmes of health promotion, prevention, restoration and rehabilitation, with the overall programme responsibility of meeting the needs of 85% of the country's population, which was 4,290,736 in 1993. To this end its policies and strategies are defined in its National Health Plan, and are designed to improve the health status of the population by implementing programmes that address priority problems in the light of the risks for vulnerable groups and coordinating activities to ensure that the resources available are used efficiently.

213. These policies and strategies fall within the framework of the Government's overall policy for social development, which is directed towards halting the spread of extreme poverty, so that the Government is therefore committed to improving the health services and environmental conditions.

214. In order to give effect to its policies, the Ministry of Health also acts in accordance with the general provisions of the Health Code, which is the legal instrument establishing its lines of action.

General objective

215. The Ministry of Public Health and Social Welfare (MSPAS), as the organ responsible for health at the national level, has the general objective of ensuring the promotion, protection and restoration of the health of the population through comprehensive care for individuals and the environment, with the participation of the community and other governmental and nongovernmental bodies.

Policies

216. To fulfil its objective and taking its social development policies as its basis, the MSPAS has defined the following policy and strategy framework:

1. To improve the health status of the people of El Salvador through the implementation of programmes that address priority problems in

the light of the risks for vulnerable groups, with emphasis on disease prevention, and the implementation of health promotion and education as well as health protection activities.

2. To coordinate the necessary action to ensure conservation of the environment for human life.

3. To coordinate the action of the different institutions in the sector, with a view to establishing a national health system in the medium term that will make for better utilization of the country's resources. The Ministry of Public Health and Social Welfare will coordinate the activities carried out by the public and private institutions acting in relation to the health of the population.

4. To improve the capacity of the health system for response to the needs of the population, concentrating efforts upon the sector of extreme poverty. To articulate the programmes and activities of the Ministry of Health with those of the Salvadorian Social Security Institute and other institutions providing health services, consolidating primary health care activities through the introduction of local programming.

5. To take steps and implement activities to make for flexible institutional development of the MSPAS, particularly measures of devolution and decentralization which will facilitate the administration of resources at the regional and local levels.

6. To give impetus to the development of the sector's human resources. To devise systems that will ensure the continuity and upgrading of personnel, using economic and professional incentives to facilitate rational utilization of the resources available.

7. To rationalize the use of the financial resources allocated to the health sector and promote economic participation by the private sector in the resolution of the health problems of the population, and to improve the mechanisms for obtaining and using external resources for specific purposes, in accordance with the objectives and priorities set out in this Plan.

8. To rationalize the use of material resources, with a view to improving and maintaining existing physical infrastructure. To dynamize the process of procurement and distribution of equipment, drugs and other critical materials.

9. To collaborate with other social sectors involved and with the Ministry of Planning in reformulating and implementing a national population policy.

10. To harmonize external cooperation with the health sector, in accordance with national priorities, so that it can be counted an additional resource for the attainment of objectives.

Strategies

217. The strategies of the Ministry of Health are:

1. extension of coverage to the entire population;

2. improvement of the capacity of each level to deal with problems referred to it;

3. decentralization;

4. institutional development;

5. financial strengthening;

6. interinstitutional and intersectoral coordination;

7. coordination of external cooperation.

Organization of the Ministry of Public Health and Social Welfare

218. Health care is divided into three levels: the first, which includes education for health and preventive actions; the second, comprising ambulatory and hospital care; and the third, which covers post-illness rehabilitation or recovery.

219. Health activities are covered by the Ministry of Public Health and Social Welfare (MSPAS), the Salvadorian Social Security Institute (ISSS), the paying private sector, and about 95 nongovernmental organizations (NGOs), which include Médecins Sans Frontières, the Salvadorian Association for Rural Health (ASAPROSAR) and the Salvadorian Health Foundation (FUSAL).

220. Responsibility for the delivery of health services is theoretically shared as follows: the MSPAS covers 80% of the population, the ISSS 11.1% and the private sector 7.5%. However, in 1989 the actual breakdown for external consultations was: 39.8% of the population covered by the MSPAS, 12.7% by the ISSS and 2.3% by others institutions (hospitals of the Armed Forces, ANTEL and the Teachers' Welfare Health Services). The rest of the population was served by the private sector, or else had no access to any kind of care.

221. During the period 1989-1993, the MSPAS allocated nearly 70% of its resources to the secondary level of care; 80-85% of these were for operating expenses. The primary level was allocated less than 30% of the budget.

222. For health services at the primary and secondary levels, the MSPAS is organized in 5 regions and has 375 health establishments, classified as follows: 15 hospitals, 15 centres, 146 units, 170 posts, 26 community posts and 3 dispensaries.

223. The private sector has some 15 hospitals and 60 clinics which deliver secondary care. The ISSS also concentrates on the secondary level and has 6 hospitals, 5 hospitalization and outpatient consultation units, and 42 centres. Of the overall existing NGOs, 95% concentrate on activities at the primary level, focusing their action on mothers and children.

224. The area of rehabilitation is covered by the Salvadorian Institute for the Rehabilitation of the Disabled (ISRI), which has 9 specialized centres and covered approximately 12,300 people in 1992. In this area of care, the private sector also caters for some disabilities through the Teletón Foundation for Rehabilitation (FUNTER) and the institution Medical Aid for El Salvador (PODES).

Resources of the Ministry of Health

225. The MSPAS has a payroll of more than 21,000 persons, with 2,184 doctors, 202 dentists, 4,566 nurses, 8,557 administrative, unskilled and service personnel, and 5,744 professionals of other types.

226. There are posts for 2,184 doctors, 202 dentists, 1,573 nurses, 2,993 nursing auxiliaries and 263 sanitary inspectors, which gives an idea of the low ratios of these personnel that still prevail in relation to the population, with 5 doctors, 0.5 dentists, 3.7 nurses, 7 nursing auxiliaries and 0.6 sanitary inspectors for every 10,000 inhabitants. For primary health care there are 1,442 health promoters in the rural areas, amounting to 5 promoters for every 10,000 rural inhabitants, 3,556 traditional birth attendants, 3,000 malaria volunteers and 629 volunteer nutrition workers.

Health financing and expenditure

227. In 1993, it is estimated that overall health expenditure was 2,687 million colons, equivalent to 4.35% of the gross domestic product (GDP). This amounts to per capita expenditure of ¢532, or US$ 61.15, which places El Salvador among the countries with an intermediate level of per capita spending, ahead of its neighbours Nicaragua, Honduras and Guatemala, according to the recent World Development Report (1993) of the World Bank.

228. It is important to note that the tremendous impact of the war on the economy has so far been offset in the health sector by the generous contribution of external cooperation, which accounted for 41% of the total MSPAS budget in 1992 but has now begun an alarming decline, amounting to 27% of the budget in 1993 and 20% in 1994.

229. The structure of health spending by subsectors shows that 38.7% emanates from the MSPAS, 27.7% from other public institutions, the most important being the ISSS, with 18.6%, and 33.6% from the private sector in all its forms, both profit- and non-profit-making. If these figures are examined in relation to the populations respectively covered, the ISSS, with responsibility for 12.5% of the country's population, spent ¢787 per entitled beneficiary, while the MSPAS, which should theoretically cover 80% of the population, spent ¢181, or 4.4 times less, and the private sector, covering 7.5% of the population, spent ¢7,390. However, the finding of the 1989 Study of Health Services Demand that this structure of user demand is valid for hospital care but not for ambulatory care must be taken into account, since 45% of medical consultations were made in the private subsector and these included a substantial proportion of middle and low income patients (57%). This study also showed that 29% of patients consulting with the MSPAS had middle or high incomes, and that 68% of the population belonging to the highest income classes admitted to hospital also used the hospitals of MSPAS. If these latter indicators, dating from 1989, are still valid today, the cost recovery system for health should seek to obtain a larger contribution from this population which has the means to pay.

230. It should be noted that, with some fluctuations, the MSPAS budget has maintained its proportional share of the national budget, which was 9.6% in 1993, while the growth at constant value in the national currency of the total funds contributed, which was 22.9% between 1992 and 1993, very much higher than the growth in the overall national budget, is an indication of the particular priority attached to public health in that year. Per capita allocations to the MSPAS, at constant values, also clearly reflect this increase (9.4%). However, the budget programmed for 1994 (¢881.9 million), although increased in colons at constant value, represents a relatively much smaller growth.

231. The MSPAS has basically three sources of funding: the Government of El Salvador (GOES), external cooperation (loans and grants), and employers' associations and special activity funds (FAE). The relative importance of these sources has not been uniform over the last five years. Whereas the proportion of funding from the GOES declined systematically from 74% in 1989 to 56.2% in 1992, the share contributed by external cooperation increased proportionally from 22.8% to 40.6% over the same period, while the contributions of the employers' organizations and FAE remained stable (3.2%); however, a change in this trend has become apparent in 1993 and 1994, with a gradual decrease in the share of external cooperation, estimated at 19.7% for 1994, with a substantial increase in the share of the GOES, projected to account for 75.5% in 1994, and with the beginnings of a process of growth in the funds derived from the sale of services and the voluntary contributions collected by the employers' associations and FAE, estimated at 4.8% for 1994.

Sources	1989 (%)	1992 (%)	1994 (%)
GOES	74.0	56.2	75.5
External cooperation	22.8	40.6	19.7
Employers and FAE	3.2	3.2	4.8
	100.0	100.0	100.0

232. In the framework of external cooperation, AID has been the largest contributor, and although its contributions have begun to be reduced, they still account for 56.5% of external resources in 1994. The importance of the contributions of this agency for both recurrent expenditure and investment must be stressed, and now that the downward trend has begun, it should be a matter of priority interest for the Government and the MSPAS to find a replacement, otherwise the normal functioning of the health services could be seriously affected.

233. The trend in the resources generated by the employers' associations and the FAE has also behaved in an interesting manner, with faster growth in the FAE than expected by the hospitals themselves, increasing their relative share from 11% in 1993 to 15% in 1994.

Implementation of programmes

234. In order to give effect to policies and strategies, there are operational programmes and support programmes.

235. The operational programmes are divided into programmes of health care activities and environmental health programmes:

(a) Health care programmes

(i) Maternal and child health and family planning programme, intended to protect the health of women during pregnancy, childbirth and the postnatal period and of children from the intrauterine period to the age of five years.

(ii) Programme of medical care, intended to cover all preventive, curative and rehabilitation activities for the promotion and restoration of individual health.

(iii) Nutrition programme, intended to promote sound dietary habits and practice, with priority focus on mothers and children in the rural and urban slum areas.

(iv) Mental health programme, with the implementation of preventive activities for the promotion of mental health, epidemiological control, treatment and psychosocial rehabilitation.

(v) Oral health programme, with the implementation of preventive activities and treatment of oral and dental problems.

(b) Environmental health programmes

(i) Environmental sanitation programme, intended to protect the health of the population and to promote favourable ecological conditions, through the regulation and sanitary control of the chemical, physical and biological pollutants that may be found in the various media (water, air, soil and food) to which human beings are exposed.

(ii) Programme for the control of vector-borne diseases, focusing on the development of measures for the control of diseases transmitted by vectors.

(iii) Basic rural sanitation programme, setting out to improve the environment in the rural areas by installing drinking water systems and latrines, and improving rural housing and community education.

236. The support programmes comprise technical support and administrative support:

(a) Technical support

(i) Programme of education for health, setting out to provide information on the technical and scientific advances that may usefully help to modify habits, customs and behaviours that are harmful for health.

(ii) Epidemiology programme, aimed at controlling disease and accidents through epidemiological instructions.

(iii) Laboratory programme, aimed at contributing to the prevention, diagnosis and treatment of diseases, control of food quality and hygiene and analysis of environmental pollution.

(iv) Information programme, aimed at collecting, producing, processing, systematizing, analysing and disseminating information at all levels.

(b) Administrative support

(i) Global administrative support programme, aimed at ensuring proper administration of human, financial and material resources.

(ii) Programme for the training and development of human resources, aimed at establishing guidelines and standards for the training of human resources for health, and the promotion and oversight of the development of the technical and administrative capabilities of personnel to improve their performance.

(iii) Personnel programme, for the administration of human resources.

(iv) Financing programme, to establish guidelines, standards and procedures for proper financial administration on the basis of financial planning and in compliance with the relevant legal and fiscal requirements.

(v) Programme for the conservation and maintenance of infrastructure and equipment, to regulate and oversee procedures and activities relating to the protection, conservation, use and maintenance of equipment and infrastructure.

(vi) Medical inputs programme, for the identification of suppliers, procurement, storage, conservation and distribution of the inputs needed for the delivery of health services.

237. Six strategic projects have been devised, as follows:

(i) Universal immunization, aimed at maintaining effective levels of coverage (more than 80%) of immunization against vaccine-preventable diseases.

(ii) Prevention and control of acquired immunodeficiency syndrome (AIDS), concentrating on epidemiology and research, control of the network of laboratories for the diagnosis of the disease, education of the population and of health personnel, control of information from blood banks, and legal aspects relating to AIDS.

(iii) Health care in disasters, aiming to reduce the risks to the population in situations of natural or man-made disasters.

(iv) Prevention and control of malaria, aimed at controlling the disease through community education, vector control and treatment of the illness.

(v) Specific nutritional deficiencies, aimed at preventing and correcting deficiencies in certain nutrients: iron, folic acid, iodine and vitamin A.

(vi) Community health, to plan, direct and evaluate the health activities addressed to the rural and urban slum populations.

Analysis of the health situation

1. 1950-1990

(a) Mortality

238. Over this period (1950-1990) a continuous decline in the rates of general mortality, still births, perinatal, neonatal, post-natal and infant mortality, and mortality by age groups, was observed.

239. Infectious diseases as a cause of death varied little during this time (969 x 100,000 population in 1950; 900.5 x 100,000 in 1990), with the leading places still taken by intestinal infections and pneumonia, bronchitis and vaccine-preventable diseases, although the latter were brought down in the last five years. In infant mortality the leading causes were intestinal diseases and acute respiratory diseases, causes related to childbirth and others.

240. There was a notable decline in mortality in the 1-4 years age group. The principal causes were diarrhoeal and acute respiratory diseases, but also malnutrition, vaccine-preventable diseases and accidents. In the 5-14 years age group the leading causes of death were gastrointestinal and respiratory diseases, malnutrition and accidents. In the 15-44 years, 45-64 years and over 65 age groups, a substantial rise occurred in deaths from behaviour-related conditions and diseases: accidents, homicide, suicide, cancers, alcoholism, diabetes mellitus, myocardial infarction and other chronic diseases.

241. In regard to the breakdown of mortality by causes, there was a considerable decline in vaccine-preventable diseases, tuberculosis, malaria and pneumonia. For certain other diseases the rates of mortality increased: cancers, cerebrovascular diseases, myocardial infarction, diabetes, and other chronic diseases.

(b) Morbidity

242. In all age groups, the predominant reasons for external consultation were: infectious parasitic infections, neurotic disorders, gastritis, urethritis and gynaecological disorders. At the hospital level the epidemiological profile was one comprising acute diseases, with an increase in diseases such as AIDS or conditions resulting from violence, such as suicide, homicide and motor vehicle accidents (annex 12).

243. There was a marked decline in rates of pulmonary tuberculosis, syphilis and other sexually transmitted diseases, epidemic mumps, typhoid fever, malaria and vaccine-preventable diseases.

244. Lumbago was the most important occupational disease, giving rise to the greatest amount of absenteeism.

2. 1989-1993

(a) Productivity, indicators and achievements in health

245. In the Plan of Action for Health 1989-1994 it is stipulated that the implementation of activities for the prevention, promotion, protection and recovery of health should be based on epidemiological criteria in order to give priority to the disadvantaged populations and make better use of resources, with the involvement of the community, so that responsibility for the actual realization of activities is fully shared.

246. In drawing up plans and translating them into operation, it is necessary to ensure compatibility and concert with the other entities in the health sector. The risks, damaging situations or populations at a disadvantage identified by epidemiological information are thus shared between the various levels, generating a response organized in the community with the involvement of the people to modify and resolve the situations identified as damaging or posing a risk.

247. The most damaging health problems in the country are malnutrition among small children, acute respiratory infections, diarrhoea and parasitic infections, vaccine-preventable diseases, perinatal diseases among infants, other conditions relating to pregnancy, other infectious diseases, psychosocial disorders resulting from the war, and motor vehicle accidents.

248. In order to serve the most vulnerable groups of the population and in the light of the first detailed census of the school population and of weekly epidemiological reports, health activities have been concentrated on the most deprived areas; 133 municipalities (annex 2) regarded as being at high risk have been identified as priority beneficiaries of the basic activities carried out by the Ministry of Health.

(b) Indicators of health activities

249. The indicators relating to health activities are as follows:

Reduction of maternal mortality:

1989 14 x 10,000 live births
1993 8 x 10,000 live births

Births attended by trained personnel:

54.9%

Reduction of infant mortality:

1985-1989 57.4 x 1,000
1993- 44.0 x 1,000 (sentinel reporting sites to 1990 - FESAL, 1993)

Mortality rate among children aged 4 years:

1989 7.83 x 1,000
1990 5.1 x 1,000

Percentage of infants with low birth weight:

1989 8.4%
1993 7.8%

Health care coverage of infants: 47.4

Reduction of the incidence of vaccine-preventable diseases:

Poliomyelitis: Zero cases from 1989 to 1993 (annex 3)
Diphtheria: Zero cases from 1989 to 1993
Measles: (annex 4) 321.8 x 100,000 in 1989; 0.25 x 100,000 cases in 1993
Pertussis: (annex 5) 0.95 x 100,000 in 1989; 0.14 x 100,000 cases in 1993
Neonatal tetanus: (annex 6) 0.54 x 100,000 in 1989; 0.13 x 100,000 cases in 1993

Immunization coverage:

Poliomyelitis	1 year	79%
DPT	1 year	79%
Measles	1 year	86%
Tetanus toxoid		70%
BCG		79%

Reduction of dental caries by 5% in the general population

Increase in life expectancy at birth:

1989 62.15
1993 66.4

Reduction in mortality from diarrhoeal disease from 4.5 to 0.2% in the last three years (annex 7)

Reduction in the incidence of cholera (annex 8)

Decline in the incidence of malaria from 9.605 in 1989 to 3.670 in 1993 (annex 9)

Rate of incidence of 0.80 x 100,000

Decline in classic dengue:

1989 578 cases
1993 123 cases

Zero mortality from haemorrhagic dengue in the last four years;

Zero mortality from malaria in the last four years;

Coverage of the urban population with access to drinking water and sanitation services, by percentage and geographical area (annex 10);

Coverage of the rural population with access to drinking water and sanitation services, by percentage and geographical area (annex 11).

(c) Significant achievements

250. The following progress has been achieved:

Process of certification of the eradication of poliomyelitis;

Process of elimination of diphtheria;

National coverage of the rural areas by health promoters: 64%

Local programming methodology functioning in the 376 establishments of the Ministry of Health;

Implementation of 10 integrated local health systems, functioning at different stages of development;

Coverage of childbirth by trained birth attendants: 21.2%

Promotion of health through various campaigns in the mass media;

Fortification of sugar with vitamin A;

Fortification of salt with iodine;

Targeting for preventive and curative activities of 133 municipalities regarded as being at high risk;

Neonatal tetanus in the control phase;

Training management and health administration of 207 middle and higher managers;

Organization of six courses in epidemiology for a multidisciplinary range of personnel;

Strengthening of health infrastructure both in the hospitals and at the primary level (Zacamil National Hospital; Benjamin Bloom Hospital; San Marcos and Unicentro Health Units; rebuilding of the Gynaecology Clinic, Central Laboratory and 15 clinics in former war zones);

Extension of coverage to the community through the formation of hospital-based medical brigades;

Recruitment of full-time human resources to staff health posts and units, with emphasis on the priority municipalities;

Strengthening of the supervision process at all levels of the health system;

Implementation of the SIG in hospitals, health centres and units, functioning at different levels of development;

Creation of a system of cost recovery, now being implemented;

Implementation of the recurrent expenditure budget;

Provision of 70 ambulances for hospitals, health centres and units;

Provision of medical surgical equipment for 10 hospitals and one health centre;

Organization of community health committees in 100% of the municipalities with health promoters;

Training of more than 4,000 doctors, nurses and nursing auxiliaries in coping with medical emergencies;

Training of more than 2,800 persons using the "Guide to Working with Local Health Systems" (SILOGUIA);

Channelling of external aid towards the priorities identified for health;

Start-up of the laboratory for the production of human and canine rabies vaccine;

Formation of various interinstitutional committees to unify efforts for the protection and preservation of health.

International cooperation

251. During the five-year period the Ministry of Public Health and Social Welfare has received 163 consultations for technical assistance, organized 530 training courses and awarded 57 fellowships for different health-related topics.

252. The international agencies supporting the Ministry of Public Health and Social Welfare comprise 22 bilateral or multilateral aid agencies; these include AID, PAHO/WHO, IDB, INCAP, PASCAP, FAO, WFP, IAEA, UNDP, OCC, ILO, World Bank,

UNICEF, OAS, GTZ, CABEI, Italian Cooperation, and the Governments of Israel, Spain, United Kingdom of Great Britain and Northern Ireland, Japan, Chile and Sweden.

Coordination with non-governmental organizations

253. The Ministry endeavours to facilitate cooperation without duplication of efforts or causing interference.

254. The plans and programmes of the NGOs fit into the framework of the policies, strategies and programmes of the Ministry of Health. A survey of the current NGO situation is under way.

255. Coordination has been established with Executive Secretariat for the Environment (SEMA), which brings together 140 NGOs working in environmental health; the Committee for Child Survival and Children; the Coordination of Maternal and Child Health Projects (PROSAMI); a grouping of 36 NGOs; which makes a total of 217 NGOs at work in El Salvador in health-related areas.

256. Coordination with nongovernmental organizations has encountered the following difficulties:

(a) there is at present no system of information to record the activities of the NGOs in the field of health and inform the Ministry of Public Health and Social Welfare;

(b) secrecy and distrust on the part of the NGOs, reluctant to provide the Ministry of Health with information;

(c) lack of coordination of health activities carried out by the NGOs and the Ministry of Public Health and Social Welfare;

(d) the massive increase in the number of NGOs and the absence of any organization to coordinate their activities.

New directions for the next five-year period

257. In accordance with the strategies proposed for the five-year period in the Economic and Social Development Plan 1994-1999, the following lines of action are proposed:

increase the physical facilities for primary health care;

provide a minimum basket of health services, with emphasis on preventive health;

increase the training and recruitment of personnel, especially promoters, birth attendants and nurses;

expand service coverage and increase the impact of programmes and projects;

supply health establishments with the equipment, drugs and materials needed to meet demand for the minimum and expanded basket of health services;

design a system of minimum universal compulsory medical insurance;

seek to ensure the administrative and financial autonomy of the hospitals;

redefine the roles of the various parties involved in health.

Article 13. Right to education

Brief description of the educational system in El Salvador

258. The urban and rural education system of El Salvador is a process divided into two major areas: formal and non-formal education.

259. Formal education is based on schools, comprising subsystems which interact together and work through actions intended to optimize their levels of efficacy and efficiency. To this end, the Ministry of Education has developed a series of policies aimed at reducing bureaucracy and decentralization which range from the restructuring of administration and planning to reform of curricular structure and the training and upgrading of human resources for the system.

260. In the process of system restructuring the functions of planning, technical teacher training and administration are gradually being decentralized. The elements of this process of educational development are: the basic needs in each particular context; policies to meet these needs; legal provisions to give overall direction and define responsibilities at the national, departmental and local levels; strategies for action and for human, financial, material, technical and other resources.

261. The implementation of policies emanating from educational development plans and programmes and projects to transform these elements into the results desired from the system are processes that remain subject to continual supervision, control and adjustment so as to ensure that the basic educational needs of society are met. Education is managed at different levels in different ways.

262. At the local level, there are basic education units whose responsibility is to shape and implement the development of education at the local level. Supervisors, head teachers and teaching staff become guides in the educational process and a close relationship is established between schools and the realities of the community. At the regional level, education policy is oriented towards regional or departmental development and aims to respond to the basic interests of regional socioeconomic and cultural development. Regional managers are responsible for education policy and will be supported by a working team for planning, administration and assignment of technical and teaching functions.

263. At the national level, the aim is to regulate the provision of education to ensure the comprehensive preparation and culture of future citizens. The Ministry of Education is the authority responsible for national policy in the sector and constitutes the directing body, together with the authorities at this level.

264. In regard to overall cohesion and flows of action, the three levels are under the same direction, with direct communication from the top down and from the base (local level) up.

265. Non-formal education offers opportunities for education outside the schools in complement to the educational process; it is used to give training to human resources who have had little or no access to the regular education system.

Policies

266. The policies of the education sector, conceived in the framework of the Government Plan (National Economic and Social Development Plan 1990-1994), are set out below:

(i) focusing of educational resources on priority attention to pre-school and basic education;

(ii) strengthening of integrated adult education;

(iii) improvement of the quality of education;

(iv) decentralization of technical and administrative services;

(v) modernization of the institutional framework;

(vi) private and community participation in the educational process.

Priorities

267. To meet these aims and challenges, the Government has defined the following priorities:

extend effective pre-school education coverage to 30% of the population between the ages of 4 and 6 years, focusing on population groups in extreme poverty;

extend effective basic education coverage to 90% of the population between the ages of 7 and 15 years, giving priority to the rural areas;

reform, modernize and decentralize the administration of the education system to permit participation by community groups.

Objectives

268. The objectives of the Government in the education sector are:

to extend the coverage of the education system, especially in infant, pre-school and basic education;

to reduce levels of drop-out and grade repetition in schools;

to raise the cultural and educational level of the adult population;

to increase the coverage of literacy and post-literacy programmes;

to establish a cultural and educational system providing for comprehensive individual development, guaranteeing equal opportunities of access to all citizens of El Salvador;

to consolidate the technical and administrative decentralization of the education services;

to guarantee the efficiency and efficacy of administrative management to ensure the effective development of educational cultural services;

to achieve greater involvement of the nongovernmental and private sectors in cultural and educational programmes and projects, so as to extend coverage and improve the quality of service.

Targets

269. The targets defined for the period 1990-1994 are as follows:

Extend coverage to 150,000 children between the ages of 4 and 6 years, with an annual increment of 5% from the 1989 level:

Pre-school classes	Target	Coverage (%)
1989	46,600	
1990	46,600	9.5
1991	72,600	10
1992	98,600	15
1993	124,600	20
1994	150,600	25
Total additional coverage	104,000	30

Extend coverage for basic education up to school matriculation to 1,228,500 children aged from 7 to 15 years, with annual increments in coverage from the 1989 level:

Year	Target	Coverage (%)
1989	882,833	68
1990	923,702	70
1991	999,900	75
1992	1,075,000	80
1993	1,150,400	85
1994	1,228,500	90

Stimulate and strengthen the capacity of nongovernmental institutions to carry out literacy activities.

Activities

270. These are as follows:

extension of the coverage of pre-school and basic education, using non-conventional systems for the provision of educational services: the "EDUCO" Community Participation in Children's Education Programme;

development of the distance learning system for basic and secondary level education;

expansion of integrated adult education;

revision and updating of the curriculum for pre-school and grades 1-6 of basic education;

continuing training of teachers, supervisors and parents in the community;

provision of teaching and learning materials for the pupils in pre-school and basic education;

consolidation of the decentralization process;

reinforcement of the technical capacities of staff in the education regions;

participation of the regions in administration, finance and technical areas;

systematization of logistic processes:

management information and statistics;

planning;

preventive maintenance of schools;

distribution of educational materials;

development of human resources.

Organization and structure of the educational system

271. The planning and organization of the Ministry of Health is based on the social philosophical line of the National Economic and Social Development Plan and on the legal bases established in the Constitution of the Republic.

272. The global strategy set out in the Sectoral Plan is aimed at the decentralization of the education services and direct participation by communities and the whole nongovernmental sector in the process of education.

273. The education system of El Salvador is structured in the General Education Act of 1991 into three levels: (1) the regulatory level; (2) the coordination level, and (3) the level of implementation. It comprises six areas: pre-school education, basic education, secondary education, higher education, adult education and literacy, and special education.

Problems overcome and continuing obstacles to broad educational coverage, achievements and efforts under way, results and comments

274. The main problem in the education sector can be summarized as the increasing inadequacy of the educational level of the population. This can be seen in the discrepancy between the quality and quantity of the human resources produced by the education system and the demands of the labour market. The following stand out among the principal causes of this problem:

(a) Limited coverage of education

275. In the first place, it is striking to note the low coverage by the education system of the population between the ages of 7 and 18. For the World Bank, El Salvador has one of the lowest levels of coverage in Latin America, surpassed only by Guatemala and Haiti. There are data showing that only 44,000 of the 230,000 children enrolled in the first grade in 1979 reached the ninth grade in 1987 and not quite 40,000 completed their basic education in nine years. Economic loss from school drop-out and grade repetition amount to US$ 74 million, according to the estimates of the World Bank. The problem is even more serious at the infant level, where only 14.7% of children eligible receive any kind of pre-school education.

276. The following among principal factors preventing greater coverage by the education system may be mentioned: the relative increase in the population, inadequate infrastructure for education, especially in the rural areas, underutilization of school buildings, low educational levels among parents, and others.

(b) Levels of schooling attained

277. The low levels of schooling attained by the population of El Salvador show a national average of only 4.47 grades, this figure comprising 6.05 grades for the urban population and only 3.09 grades for the rural areas. Although this question is related to the previous issue (coverage), it is compounded by other problems, such as the lack of adequate infrastructure and the absence of incentives to offset the opportunity costs to the family of sending a child to school. It is also important to point out that nearly 30% of the economically active population is illiterate. In this, one factor that is definitely related is the low educational level of the parents, so that this becomes an intergenerational problem.

(c) Shortcomings in curricula

278. These shortcomings are evidenced in such problems as:

Programmes and curricula that mostly date back to 1968 and whose content is not in line with the socioeconomic realities of the country; inefficient systems of evaluation of the teaching-learning process; lack of continuity in content and curricula at the different levels of education and an inadequate system of technical and vocational training.

There are other problems related to the shortcomings of the curricula and especially to the lack of relevance of programmes and courses, such as: centralization and bureaucratic organization; curricula that are not

suited to the geographical or environmental character of the area; lack of choice for parents in deciding on the kind of education they want for their children; and the gulf between the content of what is taught in middle-level technical education and the world of work.

(d) The poor quality of the services offered

279. In addition to these problems there are others that make it difficult to ensure the good quality of the service offered.

One of these is that the pupil-teacher ratio for basic education is 52 at the national level (46 in the urban and 62 in the rural area).

This ratio obtains in the basic education services provided by the public sector, with a slightly lower ratio in the private sector (48 pupils per teacher).

As well as the high average pupil-teacher ratio at the national level, there are deficiencies in teacher training as well as a lack of teaching materials, which makes it impossible to provide a better quality of service.

The high pupil-teacher ratio is also affected by reductions in the number or deterioration in the condition of schools, as well as the relative shortage of financial resources and the bad distribution of funds within the sector.

(e) Poor institutional functioning

280. This is reflected in the poor coordination within the Ministry of Education and the lack of coordination with other institutions connected with the sector, resulting from the lack of a legal framework adapted to present-day circumstances, the fact that little has been done to rationalize the resources available, and the uncontrolled proliferation of centres of higher education.

(f) Higher education

281. On this question, there is general consensus that there has been a proliferation of centres of higher education. The creation of these centres is not in itself bad, but the problem lies in the general orientation of their programmes and curricula which are not in line with socioeconomic needs of the country, and the poor quality of the graduates emerging from the system. This is definitely hampering the full human development of individuals as useful members of society, at the expense of pre-school and basic education, since resources are being used inefficiently and without proper direction for those who are obtaining higher education.

282. As a result of these problems and the causes described, the country has:

a high rate of illiteracy;

a substantial level of school drop-out, especially at the basic level;

high levels of school absenteeism;

high rates of grade repetition;

large numbers of higher education graduates not absorbed into the economic system.

Objectives

283. The long-term objectives are:

(a) To ensure provision for the physical, intellectual and moral development of individuals in society.

(b) To establish a modern educational system that will guarantee equal opportunity of access to all Salvadorians.

(c) To achieve greater autonomy in the administration of the financial and human resources of educational institutions in the public sector, promoting more direct involvement by the community in the delivery of teaching.

284. The objectives in the medium term are:

(a) To improve the coverage and quality of the education of the population of El Salvador, with greater emphasis on the pre-school and basic levels, maximizing the retention of pupils in the system and reducing school drop-out and grade repetition.

(b) To ensure that secondary education adequately prepares the students who wish to continue their studies, ensuring that they receive the relevant knowledge and training to gain access to higher education or a place in the workforce.

(c) To reduce rates of illiteracy through an effective programme of adult education, giving training and priority to younger adults to prepare them for incorporation into the workforce.

(d) To watch over the academic quality of institutions of higher education, and strengthen research in science and technology.

(e) To implement a permanent selective programme to combat illiteracy, targeted particularly to benefit the displaced, rural and urban slum populations.

(f) In basic and pre-basic education, the State will fully subsidize all children in extreme poverty, providing nutrition and health care as well as education. Additional subsidies will be allocated for the children with least resources and greatest learning difficulties.

(g) Develop an early stimulation programme for children between the ages of 0 and 6 years, to prepare them for school.

(h) Study the mechanisms required for the management of education and the administration of Ministry of Education schools to be handed over to intermediate organizations in the community, either public or private, their supervision and partial or total financing being reserved for the Ministry.

(i) Redirect the use of EDUCREDITO funds preferably to secondary education students with little means and obtain higher rates of compulsory repayment from students graduating from higher education.

(j) Reorient courses and curricula in technical institutes to ensure that technicians are trained to meet the requirements of the productive system.

(k) With regard to university education, the Ministry of Education will initiate a process of standardization of academic courses to ensure that better quality is attained by graduates at this level.

285. The objectives in the short term are:

(a) To initiate a survey of schools to investigate qualitative as well as quantitative aspects of the technical infrastructure for education.

(b) Once the survey results are available, to carry out a programme of building, refurbishment and expansion of the infrastructure for education.

(c) To set up a national fund, preferably with international funding or local resources, to support the building of schools by private foundations in undeserved areas of extreme poverty, especially in the rural areas.

(d) To give impetus to a programme for the redistribution of teachers to schools with the heaviest teacher workloads, giving priority to the rural areas, and offering teachers the incentives of better working conditions, better housing and, where possible, remuneration including the reward of a bonus for posting to a rural area.

(e) To begin devising a programme of special assistance which will include the training of teachers for the primary level, teaching materials and texts, and school meals.

The teaching of human rights in education in El Salvador

286. The Convention on the Rights of the Child, ratified by El Salvador in April 1990, represents an important undertaking and legal commitment to promote, respect and guarantee the most important human rights of children.

287. It is worth mentioning that there is some precedent for the efforts of the Ministry of Education (MINED) to ensure that human rights are included in teaching. In November 1990, the MINED, in coordination with UNICEF, organized a workshop for 121 educational supervisors to familiarize them with the Convention on the Rights of the Child. Preparation of a manual was also begun to serve as a guide for teachers in the classroom.

288. There have also been instances in which instruction in human rights is given to specific groups and it might be possible to capitalize upon these experiences in this project. To mention those most widely known, the UNHCR gives training and publicity on human rights to people repatriated, the United Nations Observer Mission in El Salvador (ONUSAL) has a team giving training in human rights who are at this moment working in different parts of the country, and PRODERE, together with Italian Cooperation, has been experimenting for some time in the San Marcos and San Jacinto areas with local education systems in

which they are using participative methods of teaching which will prove to be valuable experience for the objectives of the project in question.

289. The teaching of human rights, including the rights of the child, is a constitutional duty for the State, based on recognition of the person as the source and finality of the activity of the State, and of the family as the fundamental basis of society.

290. The adoption of the Universal Declaration of Human Rights by the United Nations in 1948 led El Salvador to make some change to the profile of its educational programme, introducing subjects related to human rights, such as the subjects of civics and ethics.

291. With the adoption of the 1993 Constitution, the influence of a worldwide trend towards changes in regard to the protection and defence of human rights can be seen. The Constitution itself, in the chapter on education, makes explicit reference to human rights, making their teaching compulsory and thus making it possible to provide education consonant with the desire for a society with greater justice and democracy (art. 55).

292. In 1989, the major problems of the education sector set out in the Economic and Social Development Plan underline "the absence of formative education promoting moral and civic values".

293. Obviously, the aspirations of the Constituent Assembly, which drafted the present Constitution, need to be worked into plans, programmes and policies that will translate them into reality, restoring respect for human rights as a norm for the community life of the nation. The present moment in the country's history offers the opportunity to seek out the ways and means of fully incorporating these aspirations into the content of public and private education so that the message goes out to families in El Salvador.

<u>The approach to human rights and the rights of the child in the reality of El Salvador</u>

294. The context for the situation of human rights, and especially the rights of the child, in El Salvador should be seen in two different but complementary perspectives. Firstly, the conditions resulting from underdevelopment and poverty, in so far as they mean deprivation of the most basic human needs of education, health, adequate food, clothing and housing, are a threat to life itself and thus a violation of human rights.

295. To quote just a few official figures relating to the situation of basic needs in El Salvador, in 1991, 30% of urban households were living in extreme poverty; the national average of schooling was 4.1 grades; the rate of illiteracy was 29%; for every thousand children born, 56 died; access to health services and drinking water was limited, and the leading causes of sickness and death were preventable diseases, originating essentially from the insalubrious environment or from prolonged malnutrition, especially among children between 0 and 5 years.

296. Certain groups of the population are more dramatically struck by the effects of poverty, as we now know, especially children and women in the lowest

income groups, so that it is important to take special steps to create awareness of the particular rights of these especially vulnerable groups.

297. The armed conflict in El Salvador which lasted for more than 12 years resulted in some 75,000 dead, many disappeared, 1.5 million Salvadorians uprooted from their place of origin, 220,000 children displaced, and 300,000 minors with some kind of war-related disability. Between 1990 and 1991 alone, some 45 minors are thought to have been killed by explosives and another 37 to have died from war-related causes.

298. During this conflict, it was the fundamental rights of children that suffered most, resulting in a manifest deterioration of moral and civic values, and an accelerated process of family break-up. As a consequence there has been a generalized loss of confidence resulting in loss of credibility by the institutions of the State, insecurity before the law and disrespect for the most fundamental of all human rights, which is the right to life.

The important characteristics which a human rights education programme should have in El Salvador

299. Human rights cannot be taken for granted. Society and the State must create the conditions for these rights to be translated into practice. In view of the fact that Salvadorian society is in a phase of transition towards consolidation and peace, the first actions to be undertaken must be to change people's attitudes and re-establish confidence among individuals and with the community. The most effective way of doing this is to mould the personality of the new generations, raising awareness among teachers, involving parents and obtaining the participation of the community.

300. A comprehensive programme on human rights to be given throughout the educational system should not only include the teaching and practice of the rights of the person but also the duties of individuals as citizens. Provision should therefore be made for this practice and the role and participation of all members of the education community should be specified to ensure that human rights are incorporated into the entire system.

301. In developing the teaching of human rights, it is important to remember, as a matter of priority, the fundamental role played by women in most homes in El Salvador and the fact that children are not only the chief victims of the war but also of underdevelopment.

302. The process of teaching human rights and the practice of democratic values leads to a new relationship between teachers and pupils and a new concept of children at school in which the children become participants in the teaching process. The modality of student management is closely related to this concept, and efforts will be made to foster this system of organization.

303. Teaching fundamental rights means teaching values through all curriculum subjects. This must become a philosophy for teaching in daily practice that directly involves parents and the community.

304. The methods and materials used in the groups to be taught must be relevant, i.e. in accord with surrounding realities. It is therefore important to look to both formal and informal methods of teaching, training and

dissemination. In designing relevant teaching materials it is also essential to find the form and language that is most easily assimilated and passed on to the target population and the national community in general.

305. Education on human rights education should become education in human rights, for an integrated approach should provide the tools for harmonious coexistence. Human rights education also means inculcating knowledge and respect for national culture.

Article 14. Compulsory free primary education

306. Article 53 of the Constitution provides that:

> "The right to an education and to culture is inherent to the individual; therefore, the preservation, promotion, and dissemination of culture is an obligation and primary aim of the State."

Article 56 states:

> "All inhabitants of the Republic have the right and the duty to receive a basic education that will enable them to perform as useful citizens. The State shall advance the formation of special education centres.
>
> When provided by the State, pre-school, basic and special education shall be free."

307. The plans of the education sector for the period 1989-1994 aim to meet the natural right of Salvadorians to receive education that will enable them to attain full personal development and achieve a democratic society in which peace, solidarity and social justice become a reality in El Salvador.

308. Thus the greatest effort of the sector is being directed towards the population groups traditionally excluded from cultural life and from scientific and technical advances in general, to enable them to play a greater part in the productive life of the nation as it develops. To this end, the Ministry of Education, with the help of the SABE project (Project to consolidate the attainments of basic education) and EDUCO programme (Community Participation in Children's Education Programme), is substantially extending the availability of free pre-school and basic education; using innovative activities and methods in line with national reality and advances in the universal science of teaching, and obtaining the participation of the Salvadorian people.

309. The fundamental objective of this effort is to extend the coverage of education among the population of El Salvador, placing greater emphasis on the pre-school and basic levels, retaining pupils in the system to the maximum extent possible and reducing school drop-out and grade repetition. And, in accordance with its constitutional mandate to provide free pre-school, basic and special education, the aim since 1989 of increasing coverage by 40% is being achieved, through the redistribution of resources at the national level for initial, pre-school, primary basic and special education, with emphasis on the most deprived areas.

310. Action has been taken to redistribute teaching personnel at the national level; supervision of schools has been implemented; experiments are being carried out with the administration of education by public and private intermediary co-management bodies; the infrastructure for pre-school and basic education, resource classrooms and special education services, has been expanded; administrative decentralization is under way at the national level; school meals programmes are being developed for the pre-school and basic levels; school facilities are being used to the maximum to accommodate three shifts per day; and use is being made of the conventional media such as the press and radio.

311. In accordance with the agreements reached and the commitments undertaken in the Convention on the Rights of the Child at the Summit on Children, on 20 November 1989, the United Nations adopted the Convention on the Rights of the Child, which lays emphasis on the right of children to education. El Salvador was one of the first countries in the world to ratify it. This was followed in 1990, in Jomtien, Thailand, by the World Conference on Education for All, convened by UNESCO, UNICEF, the World Bank and the United Nations Development Programme (UNDP).

312. At Jomtien 155 countries were represented, among them El Salvador. They undertook to meet the basic educational needs of their entire population, and especially of children.

313. The agreements reached and commitments undertaken in the ratification of the Convention on the Rights of the Child and the signing of the World Declaration on Education for All are consistent with the educational policies defined by the Government of El Salvador for the period 1989-1994.